

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 08-13555

- - - - -x

In the Matter of:

LEHMAN BROTHERS HOLDINGS INC.,

Debtor.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

July 25, 2016
10:03 AM

B E F O R E:
HON. SHELLEY C. CHAPMAN
U.S. BANKRUPTCY JUDGE

1 08-13555-scc Lehman Brothers Holdings Inc.

2 Ch 11

3

4 EVIDENTIARY HEARING re Motion of Dr. Thomas Marsoner to Deem
5 Proofs of Claim to be Timely Filed [ECF #47589]

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25 Transcribed by: Lisa Beck, Sherri Breach and Jamie Gallagher

1 A P P E A R A N C E S :

2 WEIL GOTSHAL & MANGES LLP

3 Attorneys for LBHI, as Plan Administrator

4 767 Fifth Avenue

5 New York, NY 10153

6

7 BY: DAVID LENDER, ESQ.

8 JACQUELINE MARCUS, ESQ.

9 DENISE ALVAREZ, ESQ.

10 MAURICE HORWITZ, ESQ.

11

12 HOGANS LOVELLS US LLP

13 Attorneys for Movant, Dr. Thomas Marsoner

14 875 Third Avenue

15 New York, NY 10022

16

17 BY: PIETER VAN TOL, ESQ.

18 M. SHANE JOHNSON, ESQ.

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE COURT: How's everyone today? All right. I'm ready when you are.

MR. VAN TOL: Thank you, Your Honor. Pieter Van Tol representing Dr. Thomas Marsoner. If I could, I'd like to introduce my team for the Court.

THE COURT: Sure.

MR. VAN TOL: I'm joined by Shane Johnson, associate.

THE COURT: Hello.

MR. VAN TOL: Christine Sipperman (ph), a summer associate.

THE COURT: Very nice.

MR. VAN TOL: And our client, Dr. Thomas Marsoner.

THE COURT: Hello, sir. How are you?

MR. LENDER: Good morning, Your Honor. David Lender from the law firm of Weil Gotshal & Manges for the Lehman entities. And I have with me my colleagues, Denise Alvarez --

MS. ALVAREZ: Good morning, Your Honor.

MR. LENDER: -- Maurice Horwitz --

MR. HORWITZ: Good morning.

MR. LENDER: -- and Jackie Marcus.

THE COURT: Hello, Ms. Marcus.

Okay. Opening statements or right to the testimony? I've read your submissions and I'm absolutely prepared to proceed how ever you'd like.

1 MR. LENDER: Your Honor, we would suggest going
2 straight to testimony. Perhaps a summation would be more
3 helpful.

4 THE COURT: All right. So just to level set, we have
5 had a previous hearing on this claim. And I determined that it
6 was necessary to make a threshold determination as a factual
7 matter of whether Dr. Marsoner was a known creditor of Lehman
8 Brothers. That being said, as reflected in the pleadings,
9 there are many other issues that have also been raised
10 including the adequacy of the service that was affected by
11 Lehman on Dr. Marsoner at various addresses. And also, there
12 is elements of this that seem to speak to the merits of the
13 claim. And I just want to be clear that we are here simply to
14 determine the factual issue whether or not Dr. Marsoner was a
15 known creditor of Lehman. But inevitably, I think, as
16 reflected in the papers, there's going to be some overlap with
17 the merits of the claim. So I just wanted the record to be
18 clear that even though it will from time to time sound as if
19 you folks are talking about the merits of the claim, there is
20 no determination that will be made on that today.

21 All right.

22 MR. VAN TOL: Thank you, Your Honor. Dr. Marsoner
23 calls Ruggero Magnoni to the stand.

24 THE COURT: Okay. Very well.

25 Good morning, sir. Would you raise your right hand,

1 please?

2 (Witness sworn)

3 THE WITNESS: Correct.

4 THE COURT: Please have a seat. Make yourself
5 comfortable. If you'd like a break at any time, let us know.
6 If you'd like some water, tell Dr. Marsoner's counsel.

7 THE WITNESS: Thanks, Your Honor.

8 THE COURT: All right.

9 We're going to turn this air off so that I can hear
10 you better. But if you become too warm, just let me know.

11 THE WITNESS: Right.

12 THE COURT: All right?

13 THE WITNESS: Thank you.

14 THE COURT: Okay.

15 MR. VAN TOL: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. VAN TOL:

18 Q Good morning, Mr. Magnoni, and welcome back to New York.

19 A Morning.

20 Q I'd like to start with some preliminaries. And I'd
21 appreciate it if you could be succinct. These will be broad
22 questions but if you could be brief, I would appreciate it.

23 When did you begin working at Lehman Brothers?

24 A 1977, February (indiscernible).

25 Q And what positions did you hold at Lehman Brothers?

1 A Well, from the most humble to vice chairman of Lehman
2 Brothers in New York and in London.

3 Q And you were vice chairman of which entity?

4 A LBHI and LBIE.

5 Q Did you have any other titles while you were at Lehman
6 Brothers?

7 A Before -- yeah. Managing director, chairman of
8 (indiscernible), head of several different roles that I had at
9 that -- over the years.

10 Q And I'd like to hand you a binder of exhibits, if I could.
11 (Pause)

12 Q Could you please turn to Exhibit 52 which would be the
13 first in your binder?

14 MR. VAN TOL: And, Your Honor, that's the same as
15 Exhibit 52 in the trial binder.

16 THE COURT: All right.

17 THE WITNESS: All right.

18 BY MR. VAN TOL:

19 Q And I'd like to draw your attention to the next to last
20 page. It has a number at the bottom, Marsoner606.

21 A 601, 2, 3, 4, 5, 6. Yeah.

22 Q And if you're on the right page, it should say at the top,
23 "Senior Leadership". Do you see that?

24 A Yeah.

25 Q Were you among those --

1 THE COURT: I'm sorry. I'm not with you. Behind tab
2 52?

3 MR. VAN TOL: Yes, Your Honor. And it's the next to
4 last page on tab 52. And the Bates number is Marsoner606.

5 THE COURT: Oh, I see. Thank you very much.

6 MR. VAN TOL: You're welcome.

7 BY MR. VAN TOL:

8 Q Were you part of the senior leadership, Mr. Magnoni?

9 A Yep. Yes, I was.

10 Q And was Jeremy Isaacs (ph) part of the senior leadership?

11 A Yes. Let me find him but yes, indeed.

12 Q And what about Vittorio Pignatti. Was he part of the
13 senior leadership?

14 A He was.

15 Q And --

16 THE COURT: I'm sorry, sir. You -- in response to
17 counsel's initial question, you said you were a vice chair of
18 LBHI.

19 THE WITNESS: Well, that's --

20 THE COURT: Is that correct or LBI?

21 THE WITNESS: No. LBI, I think. Yeah.

22 THE COURT: That's a big difference.

23 THE WITNESS: Yes. We have too many of those that --
24 it's kind of -- I'm not sure if this is LBI -- right, is not
25 the holdings.

1 MR. VAN TOL: And I can clarify, Your Honor.

2 BY MR. VAN TOL:

3 Q Mr. Magnoni, were you an officer of LBHI?

4 A I think I was. I'm not 100 percent sure. Now I'm
5 confused by looking at this.

6 Q But at least you were --

7 A Because we had so many of those -- do you actually know
8 that --

9 Q I'm sorry, sir. I asked you --

10 A Have you researched that --

11 THE COURT: Mr. Magnoni?

12 THE WITNESS: I wouldn't know.

13 MR. VAN TOL: It has to be your testimony.

14 THE COURT: For better or worse, when a witness is
15 testifying, only counsel or I get to ask questions. You do
16 not.

17 THE WITNESS: I'm sorry.

18 THE COURT: All right.

19 THE WITNESS: I am not 100 percent sure.

20 THE COURT: Very well.

21 THE WITNESS: -- as to what -- if there was a BHI.

22 THE COURT: Okay.

23 THE WITNESS: LBI --

24 THE COURT: This is not --

25 THE WITNESS: -- and LBIE, yes.

1 THE COURT: Okay. This is not a memory test. If you
2 know, you know; if you don't know, you don't know. All right?

3 THE WITNESS: Thanks, Your Honor.

4 THE COURT: Okay.

5 BY MR. VAN TOL:

6 Q So, Mr. Magnoni, Lehman Brothers Inc., what we call LBI,
7 that was a U.S. entity, correct?

8 A Yeah.

9 Q And was it common for members of the Lehman Brothers
10 senior membership to serve in multiple roles with different
11 Lehman entities?

12 A Yes, it was.

13 Q Are you currently employed?

14 A By --

15 Q By anyone. Do you work currently?

16 A No. I'm not employed by anyone.

17 Q Do you have any employment currently?

18 A No. I serve in many boards. And I am chairman of an
19 advisory boutique in London but not properly an employee.

20 Q And what's the name of that group?

21 A M&M.

22 Q And what -- could you tell the Court what M&M Capital is?

23 A It stands for Magnoni and Marsoner. It's a boutique
24 advisory firm registered with the FCA in the UK which allows us
25 to provide advice to companies as long as Brexit is not

1 enforced all across Europe.

2 Q And just so the record is clear, the Marsoner to whom you
3 refer is Thomas Marsoner.

4 A Thomas Marsoner.

5 Q And please also make sure that I've completed my question
6 before you answer even if it appears obvious.

7 What arrangement, if any, do you have with Dr. Marsoner
8 with regard to any profits or losses in connection with M&M
9 Capital?

10 A We share a few costs like I think we have a secretary and
11 an office. But the revenues and all the other (indiscernible)
12 costs are kept separate. Under the UK law, that is possible.
13 Actually, we pay taxes on different amounts of profits as if we
14 were completely independent.

15 Q If Dr. Marsoner were to recover in this case, would you
16 receive any benefit from such recovery?

17 A No.

18 Q How did you come to know Dr. Marsoner?

19 A Dr. Marsoner was hired by Lehman's in '95 when I was one
20 of the senior managers of the banking business in London for
21 our European business. And he came over from Salomon Brothers
22 with a group of his partners and associates to run the
23 Financial Institution's Group, which we call FIG, because we
24 were pretty weak on that role. And so he stayed with us for
25 six years, if I will remember, and then he decided to go back

1 to Austria to follow his family's business and his own personal
2 business.

3 Q About what time was that?

4 A I think it was 2001.

5 Q And to your understanding, did Dr. Marsoner have any
6 relationship with Lehman after 2001?

7 A Yes, he did. We tried to maintain a close business, a
8 relationship with him as a firm because we were particularly
9 weak in the German-speaking world in Europe. We've never been
10 very strong unlike Italy or other parts of Europe. And Thomas
11 was important for us. So we -- I actually personally, as I was
12 the head of the merchant banking area of the firm in Europe, I
13 tried to do a deal with them. A (indiscernible) families did
14 business which was one of the largest deals in Austria. And
15 the idea was to work together with Lehman's and Thomas' family
16 and buy out the average (indiscernible). We ended up not being
17 successful but we worked quite a bit together at that part.

18 But I will try to (indiscernible) my firm. We worked with
19 him and particularly, Vittorio Pignatti did engage Thomas
20 Marsoner's services for MMA deals.

21 Q Are you aware of an advisory services agreement between
22 any Lehman entity and Dr. Marsoner?

23 A I learned that as we went, I didn't see any -- all those
24 documents myself. But I knew that he was working with us and I
25 guess he had a formal relationship with us.

1 Q If you could in your binder, could you turn to Trial
2 Exhibit 48? It should be the next tab.

3 A Yes. I'm there.

4 Q Hang on. I'm -- make sure everyone can get there. It's
5 tab 48.

6 Tab 48 is a 2004 advisory services agreement. If you look
7 under paragraph 1 on the very first page, it refers to services
8 to be rendered by the consultant. And if you look in the third
9 line down, it says "to assist Lehman Brothers in the Lehman
10 Group". Do you see that?

11 A Yes, I do.

12 Q Now did you ever use the phrase "Lehman Group" when you
13 were with Lehman?

14 A Well, (indiscernible). I mean, legally, they don't have
15 any meaning but he was considered as the group of companies
16 under the same name.

17 Q And did it include companies like LBHI?

18 A Yeah. I mean, one of the group of companies, yes.

19 Q And did it include companies like LBI?

20 A I don't know. I think so but I can't really comment on
21 it. It's the first time I see this agreement.

22 Q In an earlier answer, you referred to Dr. Marsoner's
23 experience in the Austrian market. Are you aware of any
24 expertise that he had in certain industries?

25 A As I told you, he was very involved in our (indiscernible)

1 and financial institutions advisory and (indiscernible) to our
2 insurance, banks and all financial intermediaries. But in the
3 German speaking world, we were kind of weak, so anything that
4 may -- might (indiscernible) there and he could have been
5 (indiscernible), we would have been grateful because there were
6 not senior people like him around on the ground there.

7 Q Did that include or did the expertise include F1?

8 A Well, F1, I think, was his (indiscernible) in terms of
9 (indiscernible) in life he was a metro head as we call them.
10 So he knew everything about Formula One. We went to Monte
11 Carlo together in '98 and he knew everything about every car.
12 And so I thought he was very interested in it. Then I learned
13 afterwards that his family also was very interested in Formula
14 One and so, you know, he kept a strong interest on it.

15 Q Did you become aware at some point that Lehman held an
16 investment in F1?

17 A Of course, I did. I was responsible for it,
18 unfortunately, for a long time.

19 Q And why do you say unfortunately?

20 A Because we lent money to this German magnate called Kirch,
21 Leo Kirch, to his holding company who then had a number of very
22 large stakes in TV, in Germany and Austria. ATV was what
23 became afterwards SKY or actually (indiscernible). And
24 (indiscernible) the publisher and they just bought when we were
25 one of their bankers, they bought a large stake in Formula One,

1 I think 75 percent of it with most of the money coming --
2 almost all the money coming from a loan package provided by
3 Bayerische Landesbank, JPMorgan and us. So I was the senior
4 man of that account. So I was responsible for that loan which,
5 after a year and a half, went bust. The guys couldn't serve us
6 the interest. So we ended in the bankruptcy proceedings there.

7 Q And about what time period was that, Mr. Magnoni?

8 A I believe it was 2002.

9 Q Now when, to your understanding, did Dr. Marsoner become
10 involved in the F1 investment.

11 A He was called in by Vittorio Pignatti. When the loan went
12 bust and Kirch went bust and we had to face the consequences of
13 a bad loan, and became from lender to Kirch became
14 (indiscernible) of the underlying security.

15 Q And again, this is in the 2001-2002 time period?

16 A Right.

17 Q Okay. And why did -- why, to your knowledge, did Mr.
18 Pignatti call on Dr. Marsoner?

19 A Because nobody knew much about Formula One at the firm,
20 particularly in the States where Formula One was not well known
21 as an ongoing sport circuit while in Europe we were more aware
22 of it. And I was asked to step out of the day-to-day team and
23 -- because I was spending too much time in Germany trying to
24 recover the loan and spend time basically -- I was asked to
25 spend more time in getting new business into the firm and

1 manage the firm's principal part. So there was a new team
2 being formed slowly to try to get our money back.

3 Q And what was -- to your knowledge, what was Dr. Marsoner's
4 role in that new team?

5 A I think it was -- as he was residing and I think he was in
6 Austria at that time. And Kirch was in Munich and most of the
7 events were Germany-centered at that point. And he knew a lot
8 about Formula One. I did Vittorio -- but I wasn't there when
9 he was hired back -- went to the only person in our senior team
10 who knew something about Formula One.

11 Q I'd like to go back to something you said earlier which
12 was referred to the new team that was brought in. Other than
13 Mr. Pignatti and Dr. Marsoner, who else was on that team?

14 A I only figured that out afterwards in full. But Peter
15 Sherratt certainly, who was on the senior legal counsel in
16 London. I learned afterwards that Tom Bernard, the senior
17 fixed income office of the firm in New York was brought in.

18 Q Could I stop you there again? Was Mr. Bernard employed by
19 a U.S. Lehman entity to your knowledge?

20 A I wouldn't know but I guess so because almost everyone in
21 Europe were employed by Europe. And most of the U.S. guys were
22 employed by the broker dealer in New York or the other
23 subsidiaries.

24 Q Are you aware of any advice that Dr. Marsoner gave to
25 Lehman in connection with the F1 investment?

1 A I think it was involved on a longer basis. But I do not
2 know.

3 MR. LENDER: Your Honor, objection.

4 THE COURT: Just a moment, please.

5 MR. LENDER: I just heard him say that he was not
6 involved anymore in 2002, so I'm not sure how he could be
7 testifying about what happened after he was no longer involved.
8 It would be hearsay or speculation or I don't know what it
9 would be. But I don't think it's appropriate to ask him about
10 that.

11 THE COURT: I agree.

12 MR. VAN TOL: Well, Your Honor, to the extent that
13 Mr. Magnoni has developed personal knowledge after the fact, it
14 would be relevant. And it doesn't necessarily have to be
15 hearsay. He could have talked to Dr. Marsoner about things
16 that he -- that they both were aware of.

17 But I will move on.

18 THE COURT: Very good.

19 BY MR. VAN TOL:

20 Q Mr. Magnoni, what occurred with the F1 investment at
21 Lehman? In other words, how did it develop over time? I think
22 when we stopped our story, you had told us that Lehman had an
23 interest after the loan went bust, as you said. What happened
24 next?

25 A What happened is that from 2002 to 2005 --

1 MR. LENDER: Your Honor, at least we should lay
2 foundation for how he knows that. Again, he's test -- he said
3 he was out of the loan completely in 2002.

4 THE COURT: Yes.

5 MR. LENDER: Now he's being asked to testify to what
6 happened to the loan after that.

7 THE COURT: Exactly. I think simply avoiding
8 formulating questions in terms of hearsay doesn't take care of
9 the problem of testimony about matters that occurred after the
10 witness was no longer involved.

11 BY MR. VAN TOL:

12 Q Did you ever gain an understanding, Mr. Magnoni, about
13 what happened to the F1 investment?

14 A Not the first-hand because we became --

15 MR. LENDER: Objection, Your Honor.

16 THE COURT: All right. So the witness has now
17 confirmed that he doesn't have any first-hand knowledge of what
18 happened with the Formula One investment after he ceased being
19 involved. So I don't think that this line of questions is
20 really appropriate.

21 BY MR. VAN TOL:

22 Q Did you have any involvement with the F1 investment after
23 2005?

24 A Not directly. I was part of the management team of the
25 firm from the top floor. And discussions took place, which I

1 was part of, of what to do, but I was not a direct decision
2 maker on that.

3 Q But nonetheless, you participated in discussions where the
4 team was trying to decide what to do with the F1 investment.

5 A I was a spectator when that decision was made because I
6 was still considered an integral part of the whole investment.
7 And I participated in those conversations, particularly Germany
8 (indiscernible) eyes of (indiscernible) Peter Sherratt. But I
9 wasn't a decision maker.

10 Q As an integral member of the team, did you come to an
11 understanding of what happened to the F1 investment?

12 A Yes, in the sense that it was very public. As you know,
13 CVC made an offer and bought the interest of the other banks
14 and even did not send or participate in the leverage buyout of
15 the company.

16 Q Do you know why Lehman did not sell its interest?

17 A I -- because they thought the price was too low.

18 Q Any other reason?

19 A We wanted to recover as much as possible and we thought
20 that that property had more value.

21 Q And do you have an understanding of why Lehman thought the
22 property had more value?

23 MR. LENDER: Again, Judge, I know he said he wasn't a
24 decision maker. So it's -- I'm not sure he can testify to the
25 decisions.

1 THE COURT: All right. Well, the question is whether
2 he has an understanding.

3 MR. LENDER: That's fine.

4 THE COURT: So we'll hear what the answer is and go
5 from there.

6 THE WITNESS: Your Honor?

7 THE COURT: Yes, sir?

8 THE WITNESS: One thing is not to be a decision
9 maker. The other one is not to know what happened.

10 THE COURT: Certainly.

11 THE WITNESS: So if you ask me if I know what
12 happened, I'd answer honestly.

13 THE COURT: Okay.

14 THE WITNESS: So what happened is that I had
15 discussions on what to do with the different assets the firm
16 had inherited from not just this loan but the other loans
17 because we had over 500 million out to Mr. Kirch's group. And
18 in the other properties which we could have come or would have
19 obtained as security to our loan, we let go and disposed of in
20 the bankruptcy proceedings. And the firm elected not to
21 subscribe to the different solutions the Court in Munich had
22 proposed. So we lost all our interest in those assets.

23 In Formula One, instead, it was decided to stay on
24 and not sell after a long conversation to which I happened to
25 have heard of and participated. And I think the final decision

1 was refer to the U.S. as well. And I think Mr. Fuld must have
2 been part of that because we discussed that in couple of
3 occasions.

4 Q So one of the options that would be considered in 2005 was
5 to sell the F1 stake.

6 A I did.

7 Q And you mentioned earlier, Mr. Magnoni, that it was
8 determined that the F1 investment had value. Do you know why
9 it was determined that the F1 investment had value?

10 A What I know is that Thomas Marsoner sits as an advisor to
11 the firm. (Indiscernible) value and that would be beneficial
12 to Lehman to keep it -- that stake. He said it several times
13 to several people who were involved in that discussion
14 (indiscernible). But I cannot tell you if that particular
15 advice was or not material in the decision of the firm not to
16 sell the stake to CVC.

17 Q And that's because you weren't one of the decision makers,
18 correct?

19 A That is right.

20 Q But you were aware of the advice of Dr. Marsoner to
21 give --

22 A I was.

23 Q I'd like to shift gears a bit, Mr. Magnoni, and talk about
24 your experience with advisors like Dr. Marsoner.

25 To your understanding, was there a general rule of thumb

1 as to how much advisors would be paid for their work?

2 MR. LENDER: I mean --

3 THE COURT: Yes. I'm willing to let this move along.
4 But I find it difficult to see what the relevance is going to
5 be of anything that Mr. Magnoni has to say about agreements
6 that may have been in place with other advisors.

7 MR. SCHMIDT: Your Honor, one of the things that has
8 been alleged by Lehman in this case is that not just that there
9 was no agreement but that there was no agreement to pay Dr.
10 Marsoner a ten percent fee. Now to the extent they're alleging
11 that they've put that at issue and if there is a custom and
12 practice or there was a custom and practice at Lehman in 2005
13 to pay advisors ten percent

14 THE COURT: Well, let me say --

15 MR. VAN TOL: -- that's relevant.

16 THE COURT: Let me say one thing which bears
17 repeating. And the podium is in an unfortunate place.

18 MR. VAN TOL: I'm sorry, Your Honor.

19 THE COURT: I can't see --

20 MR. VAN TOL: Let me move to the side.

21 THE COURT: I can't see Mr. Lender.

22 MR. VAN TOL: My apologies.

23 THE COURT: It's very important -- and forgive me,
24 Mr. Magnoni. I meant to point this out at the top.

25 This came out in reading your pre-hearing brief.

1 Give me one moment.

2 (Pause)

3 THE COURT: It's very important to not talk just
4 about Lehman. In your pre-hearing brief, for example, you have
5 a defined term. You say you're going to talk about Lehman
6 Brothers. I'm trying to find it. It might be in a footnote.
7 Yes. Footnote 1 on page 2. "Lehman Brothers" is used to refer
8 to Lehman Brothers generally as opposed to a specific Lehman
9 Brothers entity."

10 So it's very important when you're asking questions
11 that you're not asking questions simply about Lehman because,
12 as a legal matter, my view is that it matters what we're
13 talking about. So if you could be a little more surgical in
14 your questions, I would appreciate it.

15 MR. VAN TOL: Understood, Your Honor. And that was
16 the purpose of finding out from Mr. Magnoni at the beginning
17 whether he was an officer at LBHI, whether he had any capacity
18 at LBHI. So I will certainly narrow my questions to what he
19 knows about which entity --

20 THE COURT: All right. Well, I'll let you go a
21 little bit on this line but I do have a serious question about
22 the relevance. But we can continue.

23 MR. VAN TOL: And I will focus it, Your Honor, to
24 LBEL because the advisory agreements we've seen have been with
25 LBEL.

1 THE COURT: Okay.

2 BY MR. VAN TOL:

3 Q So, Mr. Magnoni, my question is were you aware of any
4 standard rate for advisors around 2005 who were working with --
5 or had contracts with LBEL?

6 A Yes. The idea was, as you know, to keep very senior
7 people involved without -- despite not being employed anymore
8 and the standard agreement was 10 percent of the firm's
9 revenues, including capital appreciation, or 20 percent of the
10 banking business with some negotiation possible if the
11 (indiscernible) was particularly small, so just of an
12 introductory nature. And it was -- I can tell you about this
13 because we kept doing that also afterwards when I took our
14 people, Your Honor, to the (indiscernible) when we saved our
15 people and went to (indiscernible). We kept the same
16 practices. And I --

17 Q And we should -- I'm sorry to cut you off, but in the
18 interest of time, let's focus on LBEL.

19 You mentioned in your answer, Mr. Magnoni, revenues. What
20 did you mean by the term revenue?

21 A Investment banking revenues is what the firm -- you got
22 assigned to the investment banking division as their assigned
23 portion of the total revenues of the firm. And depending on
24 the product and the type of relationship varied, but, in
25 general, it used to be a JV approach between the different

1 divisions of the firm to avoid any particular competition. So
2 even if I introduce a client or my client did a fixed income
3 deal with the fixed income division banking, my division, would
4 still be a recognized, depending on the nature of the
5 transaction, a large chunk of the revenue so that I could pay
6 my people, have bonus pool and enlarged by that portion of the
7 fee.

8 Q And did the 10 percent fee come out of revenues once the
9 transaction was consummated?

10 A The 10 percent of banking would be after the -- a portion
11 of the (indiscernible) divisions. So if there was a capital
12 gain, first would be divided between the divisions and then
13 would be part of banking. Again, dependent on -- it depended
14 very much on the type of transaction.

15 To answer your question, 10 percent was standard as far as
16 I can tell --

17 Q Okay.

18 A -- and remember.

19 Q And I'm not asking you about Dr. Marsoner in particular
20 because you weren't involved --

21 A I wouldn't know.

22 Q Now I'd like to shift gears and ask you about Dr.
23 Marsoner's residence, if you know it. Do you know where Dr.
24 Marsoner lives?

25 A At that time or now or what --

1 Q At that time.

2 A At that time, as I told you, we tried to do a deal,
3 Lehman's and Marsoner, on the (indiscernible) business in those
4 years subsequent to 2001. And Dr. Marsoner was living in
5 Austria.

6 Q And are you aware of any other addresses for Dr. Marsoner?

7 A I guess he had a flat in London.

8 Q And that was in 2005, 2006?

9 A For the duration of our relationship, yes.

10 Q And is that to this day to your knowledge?

11 A No. That I know now I think is more in the UK where, I
12 think, his kids go to school. And Austria is still his place
13 of origin and I think he's there a lot.

14 Q In your binder, could you turn to page -- or to Trial
15 Exhibit 50, 5-0?

16 A Yes.

17 Q Exhibit 50 is Dr. Marsoner's 2007 advisory agreement. And
18 there's an address at the top in Innsbruck, Austria. Do you
19 recognize that address?

20 A Not really. (Indiscernible).

21 Q Do you have any reason to doubt that that's Dr. Marsoner's
22 address?

23 A No. Innsbruck, I think, is his family's origin. And
24 so -- but I never used that address myself.

25 Q At some point, Mr. Magnoni, did you become aware that Dr.

1 Marsoner was seeking compensation for the advice he provided
2 regarding F1?

3 A Yes.

4 Q And did you become aware that Dr. Marsoner submitted a
5 claim in the proceedings involving LBEL in England?

6 A Yes.

7 Q And I'd like to turn in your binder to Trial Exhibit 27,
8 please, which is the next document. Can you tell the Court
9 what this is, please?

10 A It is my letter to the administrators confirming that what
11 Mr. Pignatti stated on the same day. It was in accordance to
12 my collection.

13 Q Why did you submit the letter?

14 A I was -- well, I was asked by Dr. Marsoner but I thought
15 that it was a correct statement. It was the truth. So I had
16 no problem doing that.

17 Q Are the statements in your letter true and accurate?

18 A Yes, it is, indeed.

19 MR. VAN TOL: Your Honor, we'll move for the
20 admission of Trial Exhibit 27 into evidence.

21 THE COURT: All right. What we customarily do is
22 hold everything until the end and then counsel confers and then
23 you'll give me all the exhibits you want entered into the
24 record at the same time. All right?

25 MR. VAN TOL: Will do so, Your Honor. And we can

1 represent to the Court now that we have no objections to the
2 exhibits being offered by --

3 THE COURT: Very good.

4 MR. VAN TOL: -- Lehman in this case.

5 THE COURT: Thank you.

6 BY MR. VAN TOL:

7 Q Now, Mr. Magnoni, did you become aware that Dr. Marsoner
8 was submitting a claim in this proceeding in the U.S.?

9 A Yes.

10 Q How did you become aware of that?

11 A He told me.

12 Q About what time frame was that, do you recall?

13 A Not exactly. I don't remember.

14 Q Let's look at a document and see if that helps. If you'll
15 turn to the next document, which is Trial Exhibit 42 --

16 A Yep.

17 Q -- you'll see that this is a supplemental declaration of
18 Dr. Marsoner. And your letter is the second one appended to
19 it.

20 A Yep.

21 Q And is that your signature on the letter, Mr. Magnoni?

22 A Yes, indeed.

23 Q Why did you provide the letter, this January 14th letter,
24 that's in Exhibit 42?

25 A Because I thought it was a very proper thing to do and I

1 was asked to conform with that, believed in what I wrote, and I
2 did. So I wrote that letter.

3 Q And is everything in this letter true and accurate?

4 A Yes.

5 Q Is everything in this letter based on your personal
6 knowledge?

7 A Yes, it is.

8 Q Did you receive a draft of the letter before you signed
9 it?

10 A I did.

11 Q Could you turn to the next exhibit which is the last
12 exhibit in the binder, Trial Exhibit 64? Does this contain the
13 draft that you received?

14 A Yes, it does.

15 Q It appears that you did not make any changes to the draft
16 letter. Could you tell us why that is the case?

17 A Well, because it's exactly what I felt. It is exactly
18 what I think had happened.

19 Q Did you -- do you recall sitting for a deposition in this
20 case, Mr. Magnoni, when you were asked questions by the Weil
21 Gotshal firm and by our firm?

22 A I was, in London.

23 Q So you've provided a deposition -- excuse me -- you
24 provided a letter in this case on behalf of Dr. Marsoner. You
25 sat for a deposition. And now you've traveled to New York to

1 testify in this case. Why have you gone to all that trouble?

2 A I'm very attached to the truth. Formula One was my
3 investment and it turned out to be a very -- a (indiscernible)
4 winner after many years of agony that I had to go through
5 because it looked like a bad deal. Thomas helped getting these
6 results and I think it's only fair that be recognized. And had
7 Lehman been still alive, I would have asked to be part of that
8 reward system. But being an employee, I had no further claims
9 on it.

10 Q Are you receiving any compensation for testifying today?

11 A Not at all.

12 Q Do you bear any hostility towards Lehman?

13 A I love Lehman. Forty-one years of my life. It has been
14 the most excruciating pain seeing it go under. So I don't.

15 Q I'd like to conclude, Mr. Magnoni, by asking you what you
16 about what you did to prepare for today's testimony. Could you
17 tell the Court briefly what you did to make yourself prepared
18 for today?

19 A I did review some of our very small memories that we have
20 -- that I have at home from those days. And I reviewed my
21 declarations, my deposition and Thomas -- you guys' motion and
22 nothing else.

23 Q Have you met me before today?

24 A Not in person.

25 Q Did you speak with me over the phone to prepare for

1 today's testimony?

2 A No, sir.

3 Q Did you speak with anyone on my team to prepare?

4 A No.

5 MR. VAN TOL: Thank you, Your Honor. Subject to any
6 redirect, that's all we have.

7 THE COURT: All right. Very good.

8 MR. LENDER: Your Honor, Ms. Alvarez is going to
9 handle our cross-examination.

10 THE COURT: Very good.

11 CROSS-EXAMINATION

12 BY MS. ALVAREZ:

13 Q Good morning, Mr. Magnoni. I just have a few questions
14 for you this morning.

15 It is your opinion that Dr. Marsoner should be paid for
16 his services on Formula One, correct?

17 A Yes, it is.

18 Q Because he provided some advice to Lehman.

19 A Yes, it is.

20 Q And, as you testified, advisors were typically paid a
21 success fee.

22 A Yes.

23 Q Now in this case, you know that Dr. Marsoner filed a claim
24 for payment for Formula One against Lehman Brothers Europe,
25 correct?

1 A Yes.

2 Q Lehman Brothers Europe was the counterparty to Dr.
3 Marsoner's advisory agreement?

4 A I guess so but I don't know if it was the only one. But
5 if you say so, yes.

6 Q Well, you submitted a letter -- I believe you testified
7 you submitted a letter in support of the claim in the UK
8 insolvency proceedings?

9 A I did.

10 Q Because you believe Marsoner should be compensated for
11 Formula One.

12 A Yes.

13 Q And Marsoner asked you to submit the letter.

14 A Yep.

15 Q You know that Dr. Marsoner settled his claim and was paid
16 by Lehman Brothers Europe, correct?

17 A I learned that not a long time ago.

18 Q I'm sorry?

19 A I only learned that three months ago.

20 Q Okay. But you know he was paid by Lehman Brothers Europe.

21 A Yes, I know.

22 Q Advisors typically executed consulting agreements with
23 Lehman covering the work that would be done for Lehman
24 Brothers?

25 A Hard to say. On some occasions but I would have to

1 research where, you know, contracts expired and the
2 (indiscernible) grew as low in putting it back into shape. It
3 happened to me afterwards at (indiscernible), for example. And
4 also, some people who had oral agreements, handshakes, which
5 we, at Lehman Brothers, respected if obviously success was.
6 So, yes, in principle, you're absolutely right. But there are
7 some opportunities, occasions, where things didn't work that
8 way.

9 Q Okay. And when you negotiate these agreements -- and
10 these agreements -- when Lehman entered into these agreements,
11 these agreements typically identified how much the consultants
12 would be paid.

13 MR. VAN TOL: Objection, Your Honor. Now --

14 A Sorry. I didn't --

15 THE COURT: Hold on. Yes?

16 THE WITNESS: I didn't -- sorry --

17 THE COURT: Hold on, Mr. Magnoni. I need to hear
18 what the objection is.

19 THE WITNESS: Sorry --

20 THE COURT: -- before you continue.

21 THE WITNESS: Your Honor.

22 MR. VAN TOL: Once again, the question was Lehman.
23 So it was not targeted to any entity. So I don't mean to be
24 invoking the goose versus gander rule but I think --

25 THE COURT: You are.

1 MR. VAN TOL: -- I am, actually.

2 THE COURT: Very much invoking. I was about to
3 invoke the goose for the gander rule. So I think you can try
4 to be more specific, Ms. Alvarez, or to the extent that the
5 witness has knowledge generally, we can hear that as well.

6 MR. VAN TOL: Thank you.

7 THE COURT: All right? Thank you.

8 BY MS. ALVAREZ:

9 Q When Lehman Brothers Europe entered into the advisory
10 agreements, those agreements identified how much the
11 consultants would be paid?

12 A Yes.

13 Q You didn't negotiate any of Dr. Marsoner's agreements with
14 Lehman Brothers Europe, correct?

15 A No, I did not.

16 Q You don't know whether Lehman Brothers Europe retained Dr.
17 Marsoner for Formula One in any of those agreements?

18 A I haven't (indiscernible) at the time of any of those
19 agreements but I knew because I used to speak to Thomas and
20 Pignatti and heard from Sherratt and Isaacs during those dense
21 days that Thomas was maintained as a consultant.

22 But it was also during the same time that we did a large
23 transaction with him called BAWAG. And so, you know, Thomas
24 was an advisor to Lehman, a former Lehman employee who decided
25 to go back to Austria but it was in our interest to keep

1 involved as much as we could to our business.

2 Q Okay. So then you don't know whether any of those
3 agreements between Marsoner and Lehman Brothers Europe covered
4 Formula One.

5 A No, I do not know.

6 Q In fact, you never discussed with Dr. Marsoner whether
7 Lehman ever agreed to pay him for Formula One.

8 A Absolutely.

9 Q You never asked anyone at Lehman whether Marsoner would
10 pay him for Formula One?

11 A Not explicitly as you can imagine. We all assumed that it
12 -- at that time, also very important to know that we were under
13 water. We were losing money. And the last thing we had in
14 mind is to pay or to discuss revenue sharing when we were
15 losing \$500 million. So we were panicking a bit and we were
16 trying to find what was the best way to get back in the black.

17 So -- but no, I never discussed if Thomas had officially
18 agreed to a sharing of any fees.

19 Q Because at that time, I believe you testified, a new team
20 was created.

21 A Say that again.

22 Q A new team was created at that point to recover --

23 A You know, it evolved from the front line bankers that was
24 me and Schmitz-Morkramer, Makram Azar, was a team of people
25 involved with me in the generation of the Kirch, the

1 transaction. When it unraveled slowly, the lawyers started
2 coming in to see what was the proceeding in Munich. And then
3 the decision making what I'm going to do here, are we going to
4 let go, are we going to put more money, that became more and
5 more a decision to be taken away from the banking team.

6 So slowly, a new team emerged and I ceased to take full
7 responsibility for that account.

8 I cannot tell you whether it was just a decision -- I
9 don't think it was. It was over a period of time, of months.

10 Q Okay. And then at that point, you testified that you were
11 no longer -- you were not a decision maker at that point in
12 time.

13 A That is right.

14 Q And because you were not a decision maker, you didn't know
15 what Lehman would agree to at that time.

16 A I was not a decision maker of Formula One, day-to-day, but
17 I was part of the top management team of Lehman Brothers in
18 Europe. Actually, my office was in between Jeremy Isaacs and
19 Peter Sherratt. So it was -- you know, I was part in the day-
20 to-day conversation, what we're going to do here or there. But
21 it wasn't my decision.

22 Q Okay. And just to be clear, you never discussed with Dr.
23 Marsoner whether Lehman ever agreed to pay him for Formula One
24 because you were out of that loop.

25 A I never discussed with him because we don't discuss these

1 things. It's really an administrative issue and you don't talk
2 about those things. But if you see somebody working day -- day
3 in, day out on something of that type, of that dimension, of
4 half a billion dollars being exposed to Kirch and be part of
5 the team, you assume that, like in all the other deals that
6 were done in Austria or witness to Marsoner, he was going to be
7 paid. So --

8 Q Okay. I just want to be clear --

9 A So it was an assumption.

10 Q Okay.

11 A I never discussed with him.

12 Q Okay. Because you were a bit out of that loop.

13 A Perhaps. Not necessarily just because of that. Just
14 because we don't discuss necessarily these things. Vittorio
15 Pignatti had hired him and I assumed that he had a valid
16 agreement. Otherwise, why would he work, right?

17 Q You --

18 A You don't answer but that -- you wouldn't work if you
19 don't have an agreement, oral or written, that you're going to
20 get paid for your efforts. So I was not the right person to
21 discuss because I was not the head of a department whose PNL
22 was going to be hit if there was a sharing with an outside
23 advisor. Pignatti and M&A were the valid counterparty. And I
24 never had to question any of his decisions.

25 Q Okay. Thank you, Mr. Magnoni. I just have a few more

1 questions.

2 A Please.

3 Q You testified earlier that you submitted a letter to this
4 Court in support of Marsoner's claim.

5 A Yes.

6 Q Dr. Marsoner sent you a draft of the letter?

7 A Yes, he did.

8 Q You reviewed the letter?

9 A Yes, I did.

10 Q You signed it?

11 A Yes.

12 Q You didn't write the letter yourself, correct?

13 A My secretary in Milan typed it.

14 Q After reviewing Dr. Marsoner's draft.

15 A Yes, indeed.

16 Q And she made no changes.

17 A No, I don't think so, no.

18 Q You're currently in business with Dr. Marsoner, correct?

19 A Well, in a way, yes.

20 Q I believe you said the boutique was called M&M Capital?

21 A Yeah. But differently from what happens here, it is
22 called M&M Capital and should bear our names. But we keep
23 totally separate accounts which is something very peculiar of
24 UK and I'm not sure it's done here.

25 Q And M&M Capital was founded by Marsoner?

1 A Yeah.

2 Q You're the vice chairman?

3 A I'm the chairman.

4 Q And M&M stands for Marsoner and Magnoni, correct?

5 A They're (indiscernible), yes, but it could be also
6 anything else. It's not specifically Magnoni and Marsoner
7 (M&M). It's M&M Capital. And for us was Magnoni and Marsoner.

8 Q Okay.

9 A So our intention was.

10 Q Okay. Thank you.

11 MS. ALVAREZ: Let me just check -- okay. No further
12 questions.

13 THE COURT: Thank you, Ms. Alvarez.

14 MR. VAN TOL: No redirect, Your Honor.

15 THE COURT: Very well.

16 MR. VAN TOL: And we'd ask that the witness be
17 excused.

18 THE COURT: All right. Mr. Magnoni, thank you very
19 much.

20 THE WITNESS: Thank you very much, Your Honor.

21 THE COURT: Go out and enjoy this very hot day in New
22 York.

23 THE WITNESS: Thank you. Is this --

24 THE COURT: You may be --

25 (Witness excused)

1 MR. VAN TOL: And, Your Honor, at this time, we call
2 Dr. Thomas Marsoner to the stand.

3 THE COURT: All right.

4 Good morning, sir. Would you raise your right hand,
5 please?

6 (Witness sworn)

7 THE COURT: Very well. Have a seat. Make yourself
8 comfortable. If at any time you would like a break, even if
9 the lawyers don't stop, simply let us know. If you need some
10 water, I see some bottles sitting right over there. All right?

11 THE WITNESS: Thank you.

12 THE COURT: Thank you.

13 MR. VAN TOL: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. VAN TOL:

16 Q Good morning, Dr. Marsoner. You're currently employed at
17 M&M Capital, as we've heard, is that correct?

18 A That is correct. I am paid a salary there.

19 Q And what arrangement, if any, do you have with Mr. Magnoni
20 with respect to profits and losses that come in to M&M Capital?

21 A We share costs, regulatory costs, accounting costs and all
22 those on a 50/50 basis. London office costs on a 70/30 basis.
23 Other than that, all costs are borne by the person who incurs
24 it. And all revenues are earned by the person who earns them.
25 We have not have, at least not yet, a revenue item that would

1 have been shared by us. We keep those accounts completely
2 separately and every quarter, our accountants tell each of us
3 down to the penny what our equity in the business is.

4 Q And to be clear, if you were to recover any sums in this
5 case, would any portion of it go to Mr. Magnoni?

6 A No. Not only not to Mr. Magnoni but also not even to M&M
7 Capital. I'm here in my personal capacity.

8 Q Let's talk about your employment at Lehman Brothers. And
9 could you briefly tell the Court when you started working for
10 any Lehman Brothers entity and what your responsibilities were.

11 A I started in July of 1995. And I originally co-headed,
12 later headed, the Financial Institutions Group. Later, was in
13 charge of all the industry groups in investment banking in
14 Europe. In 2001, I resigned from my full-time position and
15 became a part-time senior advisor to the firm, to the Lehman
16 Group.

17 Q Now in the 1995 to 2001 time period, which entity employed
18 you?

19 A Forgive my hesitation. Lehman -- and forgive me, Your
20 Honor. Lehman acted so much as a one-firm entity where being
21 employed by any particular accounting entity was actually
22 fairly beside the point. It is only now that I'm even able
23 from my later role on the LBEL committee, I think I was
24 probably employed by LBL, Lehman Brothers Limited. I believe
25 that that was the employment services company under LBIE, the

1 big European partnership.

2 Q And while you were --

3 THE COURT: Just to be clear for the clarity of the
4 record, when you say LBL, are you referring to the entity that
5 we call LBEL, Lehman Brothers Europe Limited?

6 THE WITNESS: No, I do not. I was definitely not
7 employed in my full-time employment by LBEL.

8 THE COURT: Okay. So say it again who your employer
9 was?

10 THE WITNESS: I believe -- well, it was certainly a
11 subsidiary of LBIE --

12 THE COURT: Yes.

13 THE WITNESS: -- known as Libby in all --

14 THE COURT: Libby, yes.

15 THE WITNESS: -- these proceedings. And I assume --
16 I do not know that for sure -- that the employment company was
17 probably LBL, Lehman Brothers Limited, not Lehman Brothers
18 Europe Limited.

19 THE COURT: Okay. Thank you.

20 THE WITNESS: Definitely not the latter.

21 THE COURT: Thank you.

22 BY MR. VAN TOL:

23 Q And, Dr. Marsoner, when you were employed by LBL in the
24 period 1995 to 2001, what interactions, if any, did you have
25 with your counterparts in the U.S. entities at Lehman?

1 A I had daily interaction with them. Lehman was run as a
2 fully integrated global firm. In my case, that transcended all
3 the industry groups I was responsible for in Europe. So I had
4 daily interactions with my U.S. colleagues.

5 Q You brought us up before to the time period of February
6 2001. And I believe you said after that, you became a senior
7 advisor. How long did that role last?

8 A The senior advisory role lasted for about seven and a half
9 years until Lehman left me in 2008.

10 Q Who hired you in 2001?

11 A In 2001, the signatory on the advisory contract, I
12 believe, was Dr. Rydevik who was the then co-head of European
13 investment banking.

14 Q And in April 2001, did you have an understanding of what
15 your role was as a senior advisor?

16 A Yes, a very clear understanding. I had that discussion
17 with Bertil. And the role was a transaction specific role
18 where I was going to be paid a small retainer fee as earnest
19 money. And where in transactions I contributed to, I was going
20 to be paid 20 percent of investment banking fees which equate
21 in non-M&A transactions to 10 percent of firm revenues in all
22 transactions where I had significant involvement. I still
23 remember the sentence Bertil ended that description with. He
24 said, "And if you only read about a deal in your local gazette,
25 tell us about it and we make money out of it, then we will pay

1 you five percent."

2 Q You referred in an earlier answer to the contract that you
3 entered into. I'd like you to turn -- let me give you the
4 binder.

5 A Yeah. I have -- oh --

6 Q This is the subset we filed.

7 If you turn in your binder, Dr. Marsoner, to Trial Exhibit
8 16.

9 MS. ALVAREZ: And for the record, Trial Exhibit 16 is
10 a compendium of the five --

11 THE WITNESS: Yeah.

12 MS. ALVAREZ: -- agreements.

13 BY MR. VAN TOL:

14 Q Does Trial Exhibit 16 contain all the written agreements
15 that you have with Lehman -- any Lehman Brothers entity from
16 2001 to 2008?

17 A I'm not sure it does. I'm not sure it has them all. I
18 see the '07 one.

19 Q If it helps, they're --

20 A Oh, yeah. Now I see the '06. Sorry. It's two-sided.

21 Q They're in reverse chronological order.

22 A I see the '04, yeah. Yeah. Yes, I can confirm that.

23 Q And what I'd like to do is draw your attention to the last
24 agreement in this group which is actually the 2001 agreement
25 which is on page Marsoner727.

1 And is this the agreement that you entered into as your
2 first advisory agreement?

3 A That is correct.

4 Q I want to draw your attention to the first page under the
5 recitals. And it says, "Lehman Brothers wishes to be able to
6 use the services of the advisor and to provide those services
7 to other group companies for the purposes of their businesses."

8 Do you see that?

9 A Yes.

10 Q At the time you executed this agreement, did you have an
11 understanding of what was meant by "other group companies"?

12 A Absolutely. It was The Lehman Group which was The Lehman
13 Group worldwide. Wherever I could help them make money, they
14 were delighted to take it.

15 Q At the time, were you ever told that you were restricted
16 to working only for Lehman Brothers Europe Limited?

17 A Not at all. I spent a lot of time working on the
18 situation for a Canadian company, for example, over the years.
19 So absolutely not restricted to only LBEL clients. LBEL were
20 presented -- the worldwide Lehman Group and this contractual
21 relationship with me.

22 Q You testified earlier about your compensation. And if I
23 understood you, you received quarterly fees and then you were
24 also able to get success fees, is that correct?

25 A Correct.

1 Q Do you have an understanding of which Lehman Brothers
2 entity paid your compensation?

3 A It was Lehman Brothers Holdings Inc.

4 Q Did you ever question why LBHI paid your compensation when
5 your advisory agreements were with LBEL?

6 A I did not. It seemed complete and natural for me that the
7 top company since I was working for the Lehman Group worldwide,
8 would also pay me.

9 Q Over the course of the period 2001 to 2008, were there
10 ever instances in which you worked on transactions that were
11 not particularly set forth in an advisory agreement?

12 A Oh, yes. There were many of them.

13 Q Could you give us an instance or two when that happened?

14 A Well, for example, the Magna situation where I --

15 Q I'm sorry. Did you say Magna?

16 A Magna. A Canadian company where I spent a lot of time
17 working on a whole number of possible assignments for Magna
18 were either the vast majority of them did not make into the
19 agreements or even all of them. I do not know the precise
20 distinction but there were a lot of things in this business
21 that one works on for a long time. And only when revenues
22 actually crystalize, when revenues actually become visible, is
23 it worth everybody's while to document them in a formal
24 advisory agreement.

25 Q Let me ask you about the Magna transaction. Were you

1 compensated for your work in connection with that transaction?

2 A No, I wasn't because, at the end of the day, nothing ever
3 came to pass that Lehman made money on. That's a separate
4 story.

5 Q What was the time period of that transaction?

6 A I would assume it was probably in the '05 time period,
7 give or take.

8 Q Is there any other example of a transaction that you
9 worked on that was not covered specifically under an advisory
10 agreement?

11 A Well, absolutely. The largest Austrian transaction that I
12 worked on in my advisory years, which was the acquisition of
13 the Austrian bank, BAWAG, by the U.S. private equity firm
14 Cerberus, was never documented formally in any agreement. And
15 it was a transaction which Lehman made close to \$100 million
16 and I got paid certainly something like \$7 million.

17 THE COURT: So --

18 A And that was never documented.

19 THE COURT: -- the BAWAG transaction was never
20 documented as --

21 THE WITNESS: The main BAWAG transaction was never
22 documented. The ancillary -- there were about three
23 divestitures out of BAWAG. That then -- those then were
24 documented. But the acquisition of BAWAG by Cerberus on which
25 Lehman made a \$14 million M&A fee and 50 million in financing

1 and so on, that was never documented. The only documentation
2 that exists is literally an e-mail by Graham Wilson (ph), the
3 administrator, setting out what my claim was and how I was
4 going to get paid under the established framework.

5 BY MR. VAN TOL:

6 Q And what time period was the BAWAG transaction?

7 A It was signed at the end of 2006 and it closed in May
8 2007. I was paid in June 2007.

9 Q And how was your compensation fixed? You referred to
10 it -- I think you said you were paid \$7 million. How to your
11 understanding was your pay determined?

12 A Well, that's for the whole group of transactions. I think
13 the Lee acquisition transaction itself -- somewhere in the
14 exhibits we have that term sheet, that spreadsheet from Graham
15 Wilson. I was paid the usual 20 percent of the M&A fee. And I
16 was paid 10 percent of the firm revenues around financing. And
17 I was also paid 10 percent while the firm revenues around two
18 principal gains.

19 Q With whom did you work on your BAWAG transaction?

20 A On the BAWAG transaction, I worked with Christian Meissner
21 the then head of European investment banking, Michael Bonacker,
22 the head of German investment banking, and Biergen Krieger, a
23 senior M&A guy. The reality was that that's a transaction I
24 lived for about a year of my life and so I spent most of my
25 time working directly with the Cerberus team.

1 Q Over the course of the time period 2001 to 2008 when you
2 were an advisor, did you have any opportunity to interact with
3 anyone from a Lehman U.S. entity?

4 A As an advisor of Lehman U.S. entity, yes, of course. I
5 had lots of interactions with people from Lehman U.S. entities.
6 The one that, of course, immediately comes to mind is with
7 Jonathan Rouner who then held the industrial automotive brief
8 at Lehman on Magna International, the Canadian auto parts
9 company.

10 Q Let me start you there. When you say Lehman, was he at
11 LBI?

12 A He was absolutely employed at LBI, yes.

13 Q Okay. Please continue.

14 A Sorry.

15 Q Nope. Anyone else other than Mr. Rouner from a U.S.
16 entity that you worked with from 2001 to 2008?

17 A Well, there was U.S. involvement to a degree in
18 absolutely, I think -- I think in absolutely everything I ever
19 worked on. Specifically in Formula One, I've worked
20 particularly with Tom Bernard who was head of Lehman's credit
21 business who was put in charge of the Formula One workout. And
22 with Tom, I originally had the discussions about the idea for
23 JPMorgan and Lehman to hire me jointly. And I then had the
24 e-mail exchange that is part of the record on several
25 conversations, the critical time period in November 2005.

1 Q We'll come on to that, Dr. Marsoner. Before that, I want
2 to ask you about any gaps among the agreements. There are five
3 agreements from 2001 to 2008. Was there ever a time period
4 when a written agreement had expired?

5 A Yeah. Simple mathematics suggests that five one-year
6 agreements cannot possibly cover a seven and a half year time
7 span. So the period in which no technical agreement was in
8 force was nearly as prevalent as the time period when such an
9 agreement was in force.

10 Q In those gap periods, did you provide any services to any
11 Lehman entity?

12 A My services to Lehman and my relationship with Lehman in
13 those seven and a half years was completely seamless. There
14 was no change whatsoever. And the activity level and the
15 mutual work intensity based on whether the formal agreement
16 happened to be in place or not.

17 Q How, if at all, were you compensated for those services
18 that you provided?

19 A I beg your pardon?

20 Q How, if at all, were you compensated for those services
21 that you provided?

22 A Under the framework that was established from the outset
23 and that did not change in any of those five agreements, as
24 you've seen in BAWAG-Cerberus, I was just paid under the
25 established framework without it being in any of the individual

1 formal agreements.

2 Q And when you refer to the established framework, what do
3 you mean?

4 A I mean the -- it boils down to 10 percent of revenues.

5 Q I'd like you to turn to the next exhibit in your binder,
6 Dr. Marsoner, which is Exhibit 1, Trial Exhibit 1. And you'll
7 see this is an e-mail from Mr. Pignatti to Jonathan Rouner. I
8 think we established already that Mr. Rouner was an LBI
9 employee. Do you have an understanding of what LBI was as of
10 2005?

11 A What LBI was --

12 Q Yes.

13 A -- as of 2005?

14 Q Yes.

15 A It was the heart of Lehman Brothers. It was the U.S.
16 broker dealer.

17 Q Do you know why Mr. Pignatti is writing to the employee of
18 a U.S. entity regarding your compensation?

19 A Absolutely. I was working with Jonathan on actually a
20 number of Magna transactions.

21 Q And do you see in the first line, Mr. Pignatti refers to
22 your contract expiring. And he goes on to discuss fees for
23 projects that will take place after the expiration of the
24 agreement. Is this sort of discussion consistent with your
25 experience at the time when there was no agreement in place?

1 A It was completely normal.

2 Q Please turn to -- or go back to Exhibit 16. Or actually,
3 I'm sorry, Dr. Marsoner, we covered it.

4 I'd like to move on to the F1 investment. Briefly, could
5 you tell the Court how Lehman's interaction and involvement
6 with F1 began to your knowledge.

7 A Yes.

8 I apologize but this is very important for me. So, if I
9 may, I need to go back in time very quickly. Jochen Rindt,
10 Austria's first Formula One champion who died in 1970, was one
11 of my uncle's closest friends. Nikki Lauda, Austria's three-
12 times Formula One champion, was -- still is a reasonable --
13 reasonably good friend of my uncle. Already in the 70s, when
14 my uncle sold Nikki his first racecar, when my father bought
15 Nikki's first company car, I was involved.

16 This was a -- so this essentially created a -- maybe it's
17 like you're ridiculous, but, to me, important. Maybe you call
18 it petrol head, probably not correct term but it is something
19 I've been involved with all my life. I think I know a lot
20 about. And I think I, therefore, moving forward into the
21 relevant time period, suggested to Ruggero Magnoni that,
22 together with his close friend, Johann Ruppert, who then owned
23 the company called Rothmans which, in turn, was the main
24 sponsor of the Formula One team. Williams would be a good idea
25 to go to the Monte Carlo Grand Prix and kick tires a bit. We

1 did that. That is when Ruggero also met Bernie Ecclestone.
2 And that is also the time period when the fantastic deal Bernie
3 Ecclestone had done for himself on the back of Fia (ph) and the
4 other teams had become public. It was clear it wasn't going to
5 be sustainable that way. So it was clear that business
6 opportunities would follow from that.

7 Q And Ruggero is Mr. Magnoni, correct?

8 A Yes.

9 Q Okay. We've heard Mr. Magnoni talk about what happened
10 with the F1 loans. I'd like to move forward to the time when
11 Lehman Brothers was a stakeholder in F1. What, if any, role
12 did you play with respect to F1 in the 2001, 2002 time period?

13 A Well, Vittorio Pignatti called me into his office, said
14 they'd like to intensify their advisory relationship with me.
15 And trusting that they wanted to see was whether it was
16 possible to retain me jointly with JPMorgan because the
17 American banks probably had fairly similar objectives while the
18 German bank, that I knew relatively well by Rische Landesbank
19 as well as Ecclestone and Formula One potentially had very
20 different objectives.

21 So the Lehman idea was to propose me to work for both the
22 American banks on the 17 percent stakes that they each held at
23 the time.

24 Q Did that occur?

25 A It did not. JPMorgan decided that they did not require my

1 services.

2 Q Was that the end of your involvement?

3 A Not at all. In the meeting when Vittorio told me that
4 JPMorgan had passed, he asked me to stay on the case, keep him
5 involved, keep him informed and take it from there.

6 Q Why did you not include the F1 transaction or advice in
7 your original agreement with LBEL?

8 A As I said before, the time to include transactions in a
9 formal agreement was when revenues first crystallized, when
10 revenues were first become visible. In Formula One, revenues
11 first became visible in 2012. Until 2011, the head of CVC
12 testified under oath in court that he thought that the stake
13 might be worthless. So it's only in 2012 that revenues first
14 became visible. And at the time when such a transaction would
15 normally make it into an advisory agreement outcome.

16 Q Did you ever indicate to Mr. Pignatti in any way that you
17 were offering your assistance on F1 for free?

18 A Absolutely not. Quite on the contrary. And the whole
19 number of the 30 e-mails that I wrote over the three years that
20 I worked for him on this from 2002 to 2005 and very
21 specifically used words like my senior advice is and my senior
22 advice continues to be available. So in many ways I confirmed
23 in a polite way that this was a completely normal fully paid
24 senior advisory relationship.

25 Q Did anyone associated with any Lehman entity tell you that

1 you should cease working on F1 because you weren't getting paid
2 for it?

3 A Not at all. Not at all. And if this had been a pitch of
4 mine, I would have been told to leave them alone. The reverse
5 happened.

6 Q Let me ask you about that. Were there ever occasions
7 where you offered services to Lehman and they said no thank
8 you?

9 A Oh, yes, of course, there were. Oh, yes, of course, there
10 were.

11 Q All right. Dr. Marsoner, let's turn to Trial Exhibit 18
12 in your binder. It may be a few tabs over. Trial Exhibit 18.
13 If you're on the right document, the top e-mail should be a
14 November 26, 2005 e-mail from Mr. Bernard to several people.

15 A Yes, I can see it.

16 Q Now the bottom e-mail is from you to Mr. Pignatti.

17 A That is correct.

18 Q Why did you send that e-mail?

19 A I had been monitoring F1 developments and threats to the
20 value of the F1 stake for Pignatti for three years. When
21 something as material as a new owner came up, it was my core
22 duty to immediately report to him what I thought the
23 implications of this would be.

24 Q And which new owner are you referring to?

25 A I'm sorry?

1 Q Which new owner are you referring to?

2 A CVC.

3 Q All right. Just above the reference to CVC in that
4 e-mail, you say, "If this is the deal I suspect it is, my
5 senior advice is (strongly) against sowing up now." Why did
6 you write that?

7 A Because already the first -- already the first
8 announcement suggested to me that this deal was coordinated
9 quite widely within the F1 community so that it would take the
10 main risk out of the valuation of Formula One. The main risk
11 for all those years have been that the series would split. And
12 I (indiscernible) there that this was -- that this was probably
13 going to be a sale at the very low price.

14 An important component to that view of mine, as you see in
15 point 2 here, is that I had a very low opinion of the
16 Bayerische Landesbank management. I had seen them do really
17 value destructive transactions in the past, so that first I
18 heard about this -- I immediately thought that this was
19 probably a very good deal for the buyer, a very bad deal for
20 the sellers.

21 Q And that's the reference to (indiscernible)?

22 A (Indiscernible). Bayerische Landesbank, yes.

23 Q Now in that first line that I read, you used the words
24 "senior advice". Why did you use those particular words?

25 A To just reconfirm that this is the continuing four fees

1 advisory relationship that I've been working on for three years
2 and that was continuing with an important point here. So I
3 just wanted to, in a polite way, make it clear that this was
4 continuing and as a professional as opposed to a social
5 conversation.

6 Q In the paragraph that's next to last beginning with the
7 words "Needless to say", you say, "If a fresh base were
8 available to facilitate things here, mine continues to be
9 available for a very modest precision in LB's gain upon
10 eventual sale." Do you see that?

11 THE COURT: Just to be -- just for the sake of the
12 record, you misspoke. So let's try it again. "Needless to say
13 if a fresh base were helpful."

14 MR. VAN TOL: I'm sorry. I misspoke. I apologize --

15 THE COURT: You did.

16 MR. VAN TOL: -- Your Honor.

17 THE COURT: It's okay. I just want the record to
18 accurately reflect what's written on the page.

19 MR. VAN TOL: Thank you, Your Honor.

20 THE COURT: Go ahead.

21 BY MR. VAN TOL:

22 Q Dr. Marsoner, why did you refer to a fresh base there?

23 A In this very high profile and interesting situation,
24 showing one's face also has attractions. My role had been and
25 continued to be a pure behind the scenes advisory. So what I

1 was offering here was to take it one step up and also involve
2 me in negotiations. A little later, I even offered another
3 step up which is I was prepared to essentially front the
4 investment for Lehman that Lehman thought that they didn't want
5 it anymore. Escalation II and Escalation III were never
6 accepted by Lehman. But the basic advisory relationship that
7 have started when Pignatti first asked me to perform in '02
8 lasted all through certainly the end of 2005.

9 Q And in that paragraph that I read, why did you say -- use
10 the words "continues to be available"?

11 A Because it had been available for three years and it
12 continues to be available.

13 Q Were you trying to alter the terms of your deal with --

14 A Not at all.

15 Q -- Lehman when you wrote this?

16 A Not at all.

17 Q If you see the e-mail above that is forwarded to several
18 people including Mr. Bernard. Why did you do that?

19 A Well, that's the e-mail two above.

20 Q I'm sorry. Two above. Why, to your knowledge, was that
21 forwarded to Mr. Bernard?

22 A Well, just to be very precise, the original e-mail when I
23 just sniffed something, I only wrote to Vittorio. When I then
24 found out -- at least thought I found out through a
25 conversation with my uncle -- that Rondenes (ph) was also in

1 favor of this transaction, that I personally also thought huge
2 because McLaren was the other main team in (indiscernible) for
3 the 20 years up to '05. And McLaren was the leader of the
4 large group of teams that were threatening to split away. So
5 when McLaren is in favor of the CVC deal, the longevity of the
6 Formula One business that used to be about one year at the time
7 or, at most, up to the end of the Concord agreement seven years
8 now had just become a normal corporate multi-year longevity.
9 That multiplied the value of the business. So I felt that that
10 insight was so significant that I wrote not only to Vittorio
11 but also to Peter Sherratt and Tom Bernard who, to my
12 knowledge, were the three key guys on this. And it was then --
13 it was then Tom Bernard who agreed with my assessment, wasn't
14 very firm on the spelling of McLaren, but he agreed that it's
15 huge. And then and there, he takes my advice and says, I'm
16 only certain we're staying in.

17 Q In the e-mail that begins with the words "QED", the second
18 paragraph says, "Hence, don't also panic." What did you mean
19 there?

20 A It had been absolutely public that Bayerische Landesbank
21 had sold and had sold cheaply by everything one had heard at
22 the time. So I told him definitely stay in and even if
23 JPMorgan, who apart from with, all due modesty, my advice had
24 exactly the same information that Lehman had that even if
25 JPMorgan sells, Lehman should definitely not sell because of

1 the very, very bad idea.

2 Q Did you have an understanding as of November 26, 2005 that
3 Lehman was contemplating selling except one stake?

4 A I actually did. All the stakes that Mr. Magnoni mentioned
5 in his earlier testimony that were recovered out of the other
6 200 million that were lent to Mr. Kirch were let go in
7 bankruptcy cheaply. Of the whole 500 million exposure to Mr.
8 Kirch, the only part that Lehman held onto was the F1 stake.
9 So I would like to just state for the record that JPMorgan and
10 Lehman had the same information on F1 except me. Lehman itself
11 had the same information on the Kirch stakes except me. And it
12 was only where those two intersected in F1 that Lehman actually
13 stayed in.

14 Q Was the information that you provided publicly available
15 to your knowledge?

16 A It became publicly available very soon thereafter. I saw
17 a public statement by Rondenes confirming what I had heard from
18 my uncle before. I don't know how soon but very soon
19 thereafter.

20 Q What was your reaction when Mr. Bernard said in his e-mail
21 this is huge?

22 A Let me see. This is the e-mail that only --

23 THE COURT: Let's be clear what the e-mail actually
24 says. It doesn't say this is huge.

25 THE WITNESS: Yeah. He sent me a different one in

1 which I believe he also said if true, it's huge. This is an
2 internal one that I didn't actually see at the time.

3 BY VAN TOL:

4 Q Okay. Understood. Let's move on to that then. If you
5 turn to Exhibit 2 --

6 THE COURT: Could you go back. Could we stay on
7 Exhibit 18 for a moment?

8 MR. VAN TOL: Certainly, Your Honor.

9 THE WITNESS: Sure.

10 THE COURT: Dr. Marsoner, where were you when you
11 sent the e-mail to Mr. Pignatti, Mr. Sherratt and Mr. Bernard?
12 Physically, where were you?

13 THE WITNESS: I believe I was physically at my desk
14 in London at the time.

15 THE COURT: In London. Okay. So could you look on
16 Exhibit 18, the second e-mail from the top. So the e-mail from
17 you to Pignatti, Sherratt and Bernard has a timestamp,
18 Saturday, November 26th, 06.

19 THE WITNESS: Yep.

20 THE COURT: Is that -- Saturday, November 26,
21 06:57:35.

22 THE WITNESS: Yep.

23 THE COURT: So that would have been what time?

24 THE WITNESS: That would have been --

25 THE COURT: That would have been London time, 6:30

1 a.m.

2 THE WITNESS: It looks to me like --

3 THE COURT: Do you know if that's --

4 THE WITNESS: -- three minutes before 7 in the
5 morning London time.

6 (Pause)

7 THE COURT: All right. Thank you.

8 BY MR. VAN TOL:

9 Q If you go on, Dr. Marsoner, to Trial Exhibit 2 which is
10 next in your binder.

11 MR. VAN TOL: Trial Exhibit 2, for the record, is an
12 e-mail exchange beginning on November 25th and ending on
13 December 1.

14 BY MR. VAN TOL

15 Q If you look at the top e-mail, this is from you to Mr.
16 Bernard. Do you see that?

17 A Yes.

18 Q And you're providing your phone number, correct?

19 A Yes. Yes.

20 Q And you're responding to Mr. Bernard's request for your
21 phone number --

22 A Correct.

23 Q -- is that right? Is that right?

24 A Yes, that is correct.

25 Q And did you and Mr. Bernard have a discussion about the

1 advice that you had rendered in your earlier e-mails?

2 A I beg your pardon. I didn't --

3 Q Sorry.

4 A -- fully get that.

5 Q My head was down. I apologize.

6 Did you and Mr. Bernard have conversations about the
7 advice that you had provided in the earlier e-mails?

8 A Yes, of course.

9 Q Now what, if anything, did Mr. Bernard indicate to you?

10 A He'd essentially, as I recall it, restated pretty much
11 what he had been writing in these e-mails. And, of course,
12 probed me on a number of things on how certain I was, how -- by
13 then, for sure, I think, the McLaren statement was public
14 information. So he -- you know, he asked me how durable I
15 thought that was. I told him I thought very durable. Those
16 kinds of things.

17 Q Did anyone other than Mr. Bernard at any Lehman entity
18 indicate to you they did not find your advice to be valuable?

19 A No. On the contrary. Everybody who was a recipient of
20 that advice has actually been kind enough to say that it was
21 very, very useful. Even Mr. Sherratt.

22 Q Now to your knowledge, was your advice relied upon when
23 the Lehman Brothers entity decided to reinvest in F1?

24 MR. LENDER: Objection, Your Honor.

25 THE COURT: Yes?

1 MR. LENDER: Foundation. I don't know how he can
2 testify what --

3 THE COURT: Yeah. There was no foundation for that
4 question. So you're welcome to try to lay a foundation.

5 BY MR. VAN TOL:

6 Q Dr. Marsoner, did you ever come to learn whether your
7 advice was relied upon?

8 A If one reads the two e-mails by Tom Bernard, who was the
9 key guy on this and particularly if one looks carefully about
10 he tells me that that's huge, that sort of stirs. "We are
11 inclined to take your advice and stay in but we are still in
12 recovery mode. Vis-à-vis me, he hedges the impact of the huge
13 nature of my advice. And "huge" in this case is a
14 multiplication of the valuation. And if you then look at how
15 he says that to his colleagues internally was no hedge, just
16 says I'm almost certain we're staying in, I'd submit to you
17 that this is the key guy on this deal --

18 THE COURT: Where -- excuse me. Where is the line
19 that says I'm inclined to take your advice.

20 THE WITNESS: It's -- sorry. It does -- in Exhibit
21 20. The e-mail on 26 November 2005, at 16:22, which is sort of
22 on page 2 of that exhibit.

23 THE COURT: Exhibit 20?

24 THE WITNESS: Sorry. It's called Exhibit -- well,
25 Exhibit 02.

1 MR. VAN TOL: 02. Exhibit 2.

2 THE COURT: Okay. And where is it? I'm sorry.

3 THE WITNESS: If you turn over and then I think the
4 Bates stamp is the page LEH0000215.

5 THE COURT: I see it. Thank you very much.

6 THE WITNESS: There he says --

7 THE COURT: I see it.

8 THE WITNESS: Yep.

9 BY MR. VAN TOL:

10 Q So let me ask you a question I asked --

11 A Sorry. If I could just -- because how certain are you
12 about the McLaren information, it shows you how McLaren really
13 meant nothing much to him then. But he understands because he
14 misspells it completely. Then he says that huge. Then he says
15 Ecclestone and he get along well. And then he says we're
16 inclined to stay your advice but we're still in this covering
17 mode.

18 In his internal e-mail, he's already spelling McLaren a
19 little bit better. Still not perfectly. And there's not
20 hedging how his -- he now says almost certain we're staying in.
21 So I think that alone shows how -- you know, various --
22 probably the central Lehman decision maker obviously racked to
23 my advice.

24 Q Let's stick with what you knew in 2005, Dr. Marsoner.

25 A Yep.

1 Q So on that page, LEH215, and the e-mail we were just
2 looking at, Mr. Bernard sent that to you on the same day that
3 your -- of your e-mail that was at almost 7 in the morning,
4 correct?

5 A Let's see. My e-mail's London time 7 in the morning. And
6 I'm not sure what time zone the 16:22 is. But he certainly
7 replied on the same day.

8 Q And let me ask a question I asked you earlier. What was
9 your reaction when Mr. Bernard wrote to you, "That's huge."

10 A I was very pleased to get that. My experience with many
11 colleagues at Lehman was that they were hedging and that they
12 were delighted to hold the credit. Somebody who actually
13 replies in an e-mail this openly, you know, was pretty rare.
14 So I immediately thought that, number one, Tom Bernard is a
15 great guy; and number two, this is potentially a very valuable
16 e-mail which I will keep very carefully for very many years if
17 I have to.

18 Q Did you have an understanding of what Mr. Bernard meant
19 when he wrote "We are inclined to take your advice"? And what
20 I mean is, did you not have an understanding of what he meant
21 when he used the word "We"?

22 MR. LENDER: Objection, Your Honor.

23 THE COURT: Yes. I'm giving you substantial latitude
24 but we are well beyond anything that is reasonable for this
25 witness to testify to.

1 MR. VAN TOL: I'll move on, Your Honor.

2 THE COURT: Well beyond.

3 MR. VAN TOL: Thank you.

4 BY MR. VAN TOL:

5 Q Dr. Marsoner, did Lehman stay in?

6 A Lehman stayed in.

7 Q Did you ever learn which entity at Lehman reinvested in
8 F1?

9 A Only many, many years later.

10 Q When was that?

11 A I believe in the course of the UK proceedings.

12 Q And do you know a time, a year? Was it 2012? 2011?

13 A In 2012, I did not know who the precise Lehman entity was
14 that held the F1 stake. It was in 2014 or 2015 in the course
15 of the UK proceedings but I became a bit more aware and I
16 believe it was only in the course of these proceedings that I,
17 for the first time ever, heard about the relationship between
18 LCPI, LBH, LBI around the holding and the management of the F1
19 stake.

20 Q And to your knowledge, was the F1 investment also going to
21 be profitable?

22 A To my documented knowledge, Lehman generally did net
23 revenues of more than \$1.5 billion, more than half of which
24 already in cash today.

25 Q When did you learn that?

1 A That I learned in the preparation for the UK proceedings
2 where I first -- well, first, I heard in 2012, in May of 2012,
3 about the Waddell & Reed, Blackrock, and Norwegian Fund
4 investment that put a value on F1. Then recapitalizations also
5 became public knowledge. My valued view evolved over time.
6 Originally, I thought they have made a billion. Later on, I
7 realized it was a billion and a half. And the moment I have
8 seen these revenues crystallize, I made my claim.

9 MR. VAN TOL: Your Honor, I'm about to move on to a
10 new area. May I request just a brief five-minute --

11 THE COURT: Sure.

12 MR. VAN TOL: -- bathroom break?

13 THE COURT: Let's just talk a little bit about what
14 the rest of the day is going to look like. How much longer --
15 how much more do you think you have?

16 MR. VAN TOL: Half hour, Your Honor, at least.

17 THE COURT: Half an hour. Okay. And let me -- Ms.
18 Alvarez, will you be doing the cross-examination?

19 MR. LENDER: Your Honor, I'll be handling the
20 cross-examination.

21 THE COURT: Okay. And would you like to take a lunch
22 break in between the direct and the cross?

23 MR. LENDER: Happy to, Your Honor.

24 THE COURT: Okay. So why don't we take a brief break
25 and then we'll go until you're finished with your direct and

1 then we'll take lunch break. And then you have no additional
2 witnesses, correct?

3 MR. VAN TOL: That's correct, Your Honor.

4 THE COURT: All right. And then we're going to hear
5 two folks --

6 MR. LENDER: Yes, Your Honor. Both of our directs
7 are short.

8 THE COURT: Okay. All right. Very good. We'll come
9 back -- I can't see the clock very well. We'll come back at
10 five minutes to the hour. Okay? Dr. Marsoner, you remain
11 under oath during a break and indeed during a lunch break.
12 You're not to discuss your testimony with anyone or be in
13 anyone's presence while they're discussing your testimony or
14 any aspect of this case.

15 All right? Thank you.

16 MR. VAN TOL: Thank you, Your Honor.

17 MR. LENDER: Thank you, Your Honor.

18 (Recess from 11:47 a.m. until 12:00 p.m.)

19 THE COURT: All right?

20 MR. VAN TOL: Thank you, Your Honor.

21 DIRECT EXAMINATION (RESUMED)

22 BY MR. VAN TOL:

23 Q Dr. Marsoner, could you turn to Exhibit 6 in your binder,
24 please? It should be the next document after Exhibit 2. I'd
25 like to draw your attention to the top e-mail dated July 4,

1 2007 which is entitled "Thanks for the coffee". Could you tell
2 the Court what this is?

3 THE COURT: Where is this?

4 MR. VAN TOL: Exhibit 6, Your Honor.

5 THE WITNESS: This is an e-mail --

6 THE COURT: 6. Thank you.

7 THE WITNESS: This is an e-mail by me to Jeremy
8 Isaacs who, at the time, was the chief executive of the Lehman
9 Brothers businesses in Europe. So I believe that that boils
10 down to LBIE as the top company that he was the chief executive
11 for.

12 BY MR. VAN TOL:

13 Q And why are you writing to Mr. Isaacs?

14 A He had kindly invited me for coffee after he had heard
15 that I have actually been the person who was central to the
16 BAWAG-Cerberus transaction. And he actually also kindly asked
17 me whether I wanted to rejoin the firm on a full-time basis. I
18 told him that I thought that was already doing plenty of stuff
19 for the firm so that there was no particular need for me to
20 rejoin on a full-time basis. And then thought that I would
21 sort of summarize the key things I have been doing for him
22 which it looks like he had not been particularly clearly aware
23 of. And obviously, number 3 was Formula One.

24 Q When you say "Set out below is the best advice I gave LB
25 in all those years" to what are you referring?

1 A That's what I meant. The best advice I gave Lehman in all
2 those years. And the human Piranha is Tom Bernard. He
3 acquired the name in Michael Lewis' book, Liar's Poker.

4 Q And what was the purpose of you telling Mr. Isaacs about
5 the best advice you had given LB?

6 A I wanted to make sure that the people at Lehman who
7 ultimately would be the decision makers in terms of who would
8 get paid what out of it knew first-hand about my critical
9 involvement.

10 Q And your July e-mail refers to BAWAG. We talked about
11 that before. Can you tell the Court how you became involved in
12 the BAWAG transaction?

13 A I had watched the BAWAG situation for many, many years.
14 And when then BAWAG nearly went bankruptcy and the Austrian
15 trade unions sell, it was actually Lehman, specifically, I
16 believe, Michael Bonacker, who introduced me to Cerberus. And
17 as a team, we thought about which horse we wanted to back.
18 Decided we were going to go with Cerberus and then spent pretty
19 much a full year working on that.

20 Q And could you turn to the next exhibit which is Trial
21 Exhibit 20?

22 A Yep.

23 Q And in Exhibit 20, I'd like to draw your attention to the
24 very bottom e-mail --

25 A Yep.

1 Q -- which is March 5th, 2007 at 2:40 p.m. What was the
2 purpose of sending this email to Mr. Pignatti?

3 A This was a small detail around the BAWAG acquisition. I
4 got paid -- I knew I would be paid under the normal framework
5 for the M&A, the financing and the principal gains that were
6 made automatically. There was one small ancillary matter which
7 was that the Lehman Brothers private equity fund also invested
8 150 million I think euros into BAWAG alongside Cerberus. And,
9 you know, I thought that in that ancillary matter, I had also
10 been helpful. And so, I was trying to get compensated for
11 that. This failed and the person who decided that was Peter
12 Sherratt.

13 Q Now to be clear, did you receive any compensation for
14 BAWAG?

15 A I received, as you see on the Graham Wilson spreadsheet
16 that's here in the documents, some five million euros for the
17 M&A, the financing and the principal gains. And I received
18 zero for the co-investment.

19 Q Let's turn to the next exhibit which is 5, please. I
20 think you just referred to it as the Graham Wilson --

21 A Yeah.

22 Q -- spreadsheet. Now could you turn to that spreadsheet
23 which is on the second page of Exhibit 5? And could you
24 explain to us what this shows?

25 A Yes. It -- there's one unrelated transaction but the four

1 items called Cerberus-BAWAG show exactly what I just said.
2 Leverage financing fee. So that was the fee for the loan that
3 Lehman gave was 22 million euros 50 percent of which would be
4 investment banking revenues of 11 million of which 20 percent
5 amounts to an amount due to me of 2.2 million in euros and the
6 rest is Forex. Then on the M&A fee, the 14 million of which I
7 was entitled to 20 percent, gives me 2.8. And then
8 importantly, for purposes of what we're discussing here today,
9 FEX hedging and (indiscernible) interest rate swap, these
10 relatively small numbers are the principal gains. So all those
11 principal gains, first, they get split in half and then I get
12 20 percent of them which amounts to a small amount of money but
13 without any discussion. A principal gain is part of it. So if
14 you add all of that up, it's \$6.9 million -- yeah, it's
15 actually \$6.9 million for the acquisition of BAWAG by Cerberus.

16 Q So when were you paid for your services in connection with
17 BAWAG?

18 A Sorry? Where was I paid?

19 Q When.

20 A In about June of 2007.

21 Q And were you paid before or after the Lehman entity
22 received profits on the transaction?

23 A I was entered after the transaction closed and after
24 Lehman actually had the cash in hand.

25 Q And was BAWAG referred to in your 2007 advisory agreement?

1 A No, it was not.

2 Q Was it referred to in your 2006 advisory agreement?

3 A No, it was not.

4 Q And again, do you know why you were paid for that work if
5 it was not in your advisory agreements?

6 A Because I was asked to perform the work. I performed the
7 work. It was successful. It created significant money for
8 Lehman. And with the framework agreement in place, there was
9 not a shadow of a doubt, not a question ever, that I wouldn't
10 be paid.

11 Q Now who's Mr. Wilson?

12 A He's -- or was the sort of main administrator of the
13 European investment banking department of, in that case, I
14 guess, LBIE.

15 Q And in his e-mail, Mr. Wilson says "I am now authorized to
16 agree this with you". Did you have an understanding that Mr.
17 Wilson needed authorization from someone else?

18 A Well, any corporation before it pays out money has a whole
19 number of internal authorizations to obtain. And so I assume
20 that he obtained whatever authorizations they internal Lehman
21 sort of, in my experience, Kafkaesque system made him obtain.

22 Q And how, if at all, did the compensation you received for
23 Cerberus fit in with the framework that you've been describing
24 today?

25 A Perfectly. This is exactly the framework agreement which

1 boils down to 10 percent of firm revenues except when it's M&A
2 when it's 20 percent.

3 Q All right. Dr. Marsoner, I'd like to talk now about your
4 addresses --

5 A Sure.

6 Q -- which have become an issue in this case. Where do you
7 currently live?

8 A At 20 Earls Terrace, London W8 during the school year.

9 Q And where is your domicile if it's different from England?

10 A My domicile is and has always been in Austria. And the
11 Innsbruck address that I left with the UK tax authorities is
12 also the address that my first advisor agreement with LBEL had
13 and my last two advisory agreements.

14 Q Have you ever had another domicile?

15 A I've never had a domicile other than Austria.

16 Q Did you receive notice of the U.S. claims bar date at
17 either your London address or at your Austrian address?

18 A No. I absolutely did not.

19 Q Did you ever inform anyone at Lehman that you live in
20 London?

21 A Did I ever inform anybody at Lehman that I live in London?

22 Q Yes.

23 A Certainly during my full-time years. My London address
24 which was the flat before I bought the house was on all my pay
25 slips. So that London address was certainly known to everybody

1 at Lehman.

2 THE COURT: Everybody at Lehman. That's a very large
3 number of people.

4 THE WITNESS: Sorry. Everybody at Lehman who --
5 forgive me -- who would care to look at the records.

6 BY MR. VAN TOL:

7 Q All right. Did you ever inform anyone that you worked
8 with -- I want to limit it to the people you worked with. Did
9 you ever inform anyone that you worked with that you live in
10 Austria?

11 A My advisory agreements addressed to me in Austria
12 specifically cite my expertise in markets including Austria.
13 So from that alone, I believe it is very clear that my
14 counterparts knew that I'm an Austrian citizen. Most
15 transaction I worked on have at least an Austrian aspect to
16 them. So, yes -- yes. Yes, of course. It is to the best of
17 my knowledge very widespread knowledge at Lehman at the time
18 that I -- I am Austrian and spent some of my time in Austria,
19 some of m time in London, some of my time elsewhere.

20 Q Could you turn to Trial Exhibit 31, please? Just two
21 exhibits in. Trial Exhibit 31 is an e-mail exchange. The top
22 e-mail is August 9, 2010 and then there's some 2008 e-mails
23 below that.

24 Could you tell the Court what this is?

25 A My LBI, to be very precise -- my LBI brokerage team, Jim

1 Puccirrelli (ph), Marion Maskowski (ph) and Fran Auer (ph),
2 during Lehman's lifetime, had arranged a \$5 million U.S. Forex
3 collar for me. And I had posted, since (indiscernible) on a
4 way a bit, I have to post collateral in a margin account. So
5 the -- you see that the first e-mail is dated the 2nd of
6 October. This is already two weeks after the bankruptcy.
7 Until then, what turns out to have been my contractual
8 counterpart, LBCC, was actually -- had actually not filed for
9 bankruptcy. So I did get a little bit of my margin account
10 back in those two weeks. And then LBCC presumably also filed
11 so I got nothing back anymore. And then I sat on -- I was out
12 the margin and I wanted to make sure that if then for the
13 balance of the life of this collar it would move against me,
14 nobody could go after me since I was not able to re-hedge. And
15 therefore, whether -- the bottom here, Jim, is a termination by
16 me of a collar for cause.

17 Q Now let me ask you about the middle e-mail which is dated
18 October 27th from you to Allyson Carine at Barclays Capital.
19 First of all, why were you writing to Ms. Carine at Barclays
20 Capital?

21 A Barclays Capital had bought LBI. And for all intents and
22 purposes, were essentially -- yeah -- were the agents for LBCC
23 that technically LBI had been before.

24 Q In the paragraph that's got a number 2 next to it, you
25 say, "When can I" -- or you say "When I can expect the sum U.S.

1 \$60,000 margin funds in this account back?" Were you expecting
2 to get money back from LBCC?

3 A In my -- in my naiveté U.S. bankruptcy matters, I did hope
4 that at some point and at some percentage, some of those 60,000
5 would come back, yes.

6 Q And then you sign it. And then beneath your signature is
7 an Innsbruck, Austria address. Why did you include that
8 address?

9 A This -- this is the most permanent address in my life.
10 It's the house where my grandfather lived, where my father and
11 my brother have offices. It's basically the one building in my
12 life that has never changed which is why I designated it as my
13 domicile. And since I felt that this would be a very long-term
14 thing, I made sure that the domiciliary address, the one where
15 things always can validly be served upon me, would be in the
16 records of my counterparty.

17 Q Did you ever provide any addresses to any Lehman entity
18 that were other than the London Earls Court address and the
19 Austrian address?

20 A Well, yes, of course. In my invoicing policy, I used
21 addresses of where I happened to be for reasons of pure tax
22 cosmetics, not reasons of anything in any way dodgy under tax
23 law, as some seem to allege.

24 Q Have you ever been accused by any authorities in the UK of
25 breaking UK tax law?

1 A I've not only not been accused, my tax matters in the UK
2 have been audited in microscopic detail for the years 2003 to
3 2009 and I had to submit documented calendars for six years.
4 It was a stack about this high. It was boarding cards, hotel
5 bills and whatever else that documented that I was indeed
6 outside the UK for more than 180 days. And as a result of that
7 audit that is complete, not only are all my UK tax matters
8 perfectly in order, I didn't have to pay anything in addition.
9 On the contrary, I actually got a withholding tax claim that I
10 have been claiming for a while back. So the allegation that I
11 should have been in any way anything other than precise and
12 forthright on my tax matters is frankly offensive.

13 Q So I've seen references in the documents to addresses in
14 Malta, Mexico and Italy. Are you able to receive mail at those
15 addresses?

16 A Absolutely not. I happened to be there at the time when
17 the first invoices that I wrote were sent int. And my
18 objective in using addresses of places where I happened to be
19 was to just make -- have the file precisely reflect the reality
20 that these were legitimate offshore transactions for me,
21 perfectly legitimate under UK tax law.

22 Q From 2001 to 2008, did you ever receive any correspondence
23 from any Lehman entity at the addresses in Malta, Mexico or
24 Italy?

25 A I do not believe so, no.

1 Q And after 2008, did you ever receive any correspondence
2 from any Lehman entity at those addresses?

3 A Absolutely not, no.

4 Q The last thing I want to ask you, Dr. Marsoner, is about
5 the claims that you submitted both here and in England.

6 Let's start with England. Why did you submit a claim for
7 the F1 work in the English proceedings?

8 A Because LBEL was my direct contractual counterparty. LBEL
9 was working on behalf of the Lehman group worldwide and LB --

10 THE COURT: When you say LBEL was your direct
11 contractual counterparty, which contract are you referring to?

12 THE WITNESS: All the five.

13 THE COURT: All the five that are --

14 THE WITNESS: All the five one-year contracts --

15 THE COURT: Okay.

16 THE WITNESS: -- that cover the full seven and a half
17 year period.

18 THE COURT: Okay. Thank you.

19 THE WITNESS: And LBEL was actually able to -- to pay
20 me on a Frankfurt fee that became due later. So it was very
21 obvious that LBEL would be my first port of call.

22 BY MR. VAN TOL:

23 Q And when did you settle your claim against LBEL?

24 A I believe it was in June of 2014.

25 Q Now at some point, you decided to turn to the U.S. and

1 seek compensation here, is that correct?

2 A That is correct.

3 Q Why did you do so?

4 A Because the main issue that I encountered in my UK claim
5 was that the profits were all in the U.S. so that the risk that
6 was made very clear to me was that I might well win the UK
7 proceedings but that then the UK companies would say, yeah,
8 great, but we don't have the money. The money is in the U.S.
9 That became clear to me in June of 2014. And I then saw -- it
10 hadn't been drafted by me. It had been drafted by Linklaters
11 that the settlement agreement was very UK specific. So when I
12 became aware of the settlement agreement being very UK
13 specific, I started talking to U.S. counsel. I did not
14 actually go to Hogan Lovells first. I tried the cheaper firm
15 first. When the cheaper firm did not seem to be up to the
16 standards I had experienced from Hogan Lovells in London, I
17 then went to Hogan Lovells in New York. And it was -- and it
18 was at that time that I first learned what bar date and bar
19 date notices means.

20 Q You asked Mr. Pignatti, Mr. Magnoni and Mr. Bernard to
21 submit letters in these proceedings.

22 A Yes, I did.

23 Q Why did you do that?

24 A Well, in the UK proceedings -- or in the U.S. proceedings?
25 Which is your question?

1 Q In the U.S. proceedings.

2 A Okay. In the U.S. proceedings, I asked Magnoni and
3 Pignatti because they had kindly done so in the UK
4 proceedings. I asked Tom Bernard for a letter because there
5 was an e-mail by Peter Sherratt that contained a flat lie in
6 two respects. He said in that e-mail, which is part of the
7 record here, that Christian Meissner and Tom Bernard agreed
8 that I have no claim. So I had actually -- when I got that e-
9 mail -- Christian Meissner I know very well. I called him
10 immediately and he told me that he had never said any such
11 thing. On the contrary, he had said that -- this was before
12 his aegis. He could say nothing about him. And then I managed
13 through a mutual acquaintance to get to Tom Bernard and had a
14 discussion with Tom Bernard about whether he really thought
15 that that deserved nothing. And on the contrary, he actually,
16 more weakly than Pignatti and Magnoni, thought that I actually
17 did deserve something and kindly enough wrote a letter in
18 support.

19 Q Did you provide draft letters to any of those gentlemen?

20 A Yes, of course.

21 Q Why?

22 A Well, it's quite an imposition to ask somebody for
23 anything and to make it as easy for them as possible is quite
24 natural. And then I obviously asked my attorneys, i.e., your
25 colleagues, to provide drafts that made sense under U.S. law

1 that made sense to me. Those were then passed on to them with
2 the very specific statement to please mark them up how ever
3 they wanted because I wanted them to only write something they
4 truly believed in.

5 THE COURT: I'm sorry. Can I understand this? The
6 draft letter --

7 THE WITNESS: Yes.

8 THE COURT: -- that was sent to Mr. Magnoni --

9 THE WITNESS: Yeah.

10 THE COURT: -- that was written by Hogan Lovells?

11 THE WITNESS: Absolutely. All three -- the first
12 drafts came from Hogan Lovells at my request.

13 THE COURT: Thank you.

14 BY MR. VAN TOL:

15 Q And, Dr. Marsoner, when changes were made to any of the
16 letters, did you object?

17 A I accepted them.

18 Q And are you aware of anything in the three letters to Mr.
19 Pignatti, Mr. Magnoni and Mr. Bernard that is in any way
20 untrue?

21 A I'm absolutely not aware of anything that is in any way
22 untrue. Already the drafts I submitted looked perfectly fine
23 to me. Otherwise I wouldn't have submitted them. But then, of
24 course, perceptions between human beings change. And the
25 perceptions of the three people who kindly submitted those

1 letters have to be the ones prevailing.

2 Q Thank you, Dr. --

3 A And I think, short of being -- I think with Bernard, I did
4 have one discussion about the order of his letter where I did.
5 So in one I may have misspoken slightly earlier. I believe in
6 the Bernard exchange, he sent me a draft -- it's all in the
7 records anyway. But saying something like does this work. And
8 I said something like it doesn't really flow. Can we please
9 change it around? And we came to change it around.

10 Q Did you try to persuade anyone to change any of the facts
11 that are in their letters?

12 A Of course not.

13 MR. VAN TOL: Thank you, Your Honor. Subject to any
14 redirect, that's all we have.

15 THE COURT: Thank you.

16 Give me one moment.

17 (Pause)

18 THE COURT: Okay. So I think this would probably be
19 a good time to take the break. I had originally said an hour
20 but perhaps I could talk you into something shorter than an
21 hour because this is taking a longer time than I anticipated.
22 How do you feel about that, folks?

23 MR. VAN TOL: We're happy coming back at 1 o'clock,
24 Your Honor.

25 THE COURT: All right. Well, I'm looking more at the

1 Lehman side since they're up next. Can we do 45 minutes?

2 Would that --

3 MR. LENDER: That would be fine, yeah.

4 THE COURT: Would that give you enough time?

5 MR. LENDER: Yeah. I'm more interested in just
6 getting something quick to eat. So 45 minutes would be great.

7 THE COURT: Okay. Did we -- I don't know if you
8 asked my chambers staff for breakout rooms. Do you have rooms?

9 MR. VAN TOL: We don't, Your Honor.

10 THE COURT: Well, had we known ahead of time, we
11 could have given you rooms. But if you -- and not to be --
12 well, I have one conference room. If you folks would like a
13 conference room as well, we could try to find something for
14 you. But --

15 MR. VAN TOL: I think we're fine, Your Honor. We
16 appreciate the offer.

17 THE COURT: -- I'm more concerned with allowing the
18 folks who are up next to find a place to eat. So if you want
19 to come back and use a conference room, just knock on the door
20 and someone will let you in.

21 So, Dr. Marsoner, I'm afraid it's going to be a
22 boring lunch hour for you. All right? So you either -- I
23 would ask you to have lunch on your own. Or if you have lunch
24 with your counsel, talk about nothing but the heat and, I don't
25 know, how about politics in the United States. That's a boring

1 topic.

2 All right?

3 MR. LENDER: We'll need more than 45 minutes, Your
4 Honor.

5 THE COURT: Yeah. But in any event, the rules hold.
6 No discussion whatsoever about the case or your testimony. All
7 right, sir?

8 THE WITNESS: I'll stick to Austrian politics --

9 THE COURT: Okay. About which I know nothing. Thank
10 you very much.

11 MR. LENDER: Thank you, Your Honor.

12 THE COURT: We'll see you in 45 minutes. So that'll
13 be 1:15.

14 (Recess from 12:29 p.m. until 1:20 p.m.)

15 THE COURT: All right. Welcome back. Oh. You've
16 rearranged my courtroom.

17 MR. LENDER: Is that all right?

18 THE COURT: I suppose so.

19 MR. LENDER: I'll put it back. I promise.

20 THE COURT: All right. If you break anything, you
21 will have to answer to folks above my pay grade.

22 MR. LENDER: I will do my best.

23 THE COURT: All right.

24 MR. LENDER: May I proceed?

25 THE COURT: Yes.

1 CROSS-EXAMINATION

2 BY MR. LENDER:

3 Q Good afternoon, Dr. Marsoner.

4 A Good afternoon.

5 Q I put before you a -- just a full set of the exhibits so
6 that if we want to go over some exhibits, we can today.

7 Now, Dr. Marsoner, you understand that Lehman acquired its
8 interest in Formula One in 2002, correct?

9 A Yes, that is correct.

10 Q Lehman had underwritten \$300 million of a \$1.6 billion
11 loan made by various lenders to Leo Kirch?

12 A Correct.

13 Q And you had no involvement whatsoever in the loan itself,
14 correct?

15 A I had only very peripheral, very little involvement. But
16 I certainly did not work on the loan transaction as such. It
17 would not be an entirely correct statement to say that since
18 the 1998 initiation of the Formula One thing I was not at all
19 involved. I was certainly aware that it was happening.

20 Q But you had no involvement whatsoever in the loan itself,
21 correct?

22 A I was luckily not on the team that decided to make that
23 loan.

24 Q And then in 2002 when Mr. Kirch defaulted on the loan,
25 Lehman and the other lenders foreclosed on the collateral. And

1 Lehman acquired a 17 percent interest in Formula One, correct?

2 A That is correct.

3 Q And one of those other lenders was JPMorgan.

4 A That is correct.

5 Q And at the time, in 2002, Lehman and JPMorgan considered
6 hiring you to provide services in connection with Formula One,
7 right?

8 A Correct.

9 Q And you met with people at JPMorgan about possibly
10 retaining your services, right?

11 A Three of them, that's right.

12 Q And at the time, that decision was made by JPMorgan not to
13 retain your services for Formula One, right?

14 A Which cost them a billion dollars. That is correct.

15 Q So the answer to my question is yes?

16 A The answer is yes.

17 Q Okay. Now from 2002 forward, you did provide certain
18 advisory services pursuant to advisory services agreements that
19 you had signed with Lehman Brothers Europe Limited, correct?

20 A Correct.

21 Q And your main contact at Lehman was Vittorio Pignatti?

22 A Vittorio Pignatti, that is correct.

23 Q And at least through 2006, your contractual counterparty
24 was Mr. Pignatti.

25 A Correct.

1 Q And Mr. Pignatti was head of European M&A.

2 A Correct. Towards the end of the period you mentioned, we
3 had moved over and had become head of European merchant banking
4 which was the private equity function.

5 Q Great. And Mr. Pignatti certainly would know the rules of
6 how and when a Lehman consultant like yourself would be
7 entitled to get paid, right?

8 MR. VAN TOL: Objection, Your Honor.

9 THE COURT: Yes.

10 MR. VAN TOL: It's calling for speculation about what
11 Mr. Pignatti would know.

12 THE COURT: Can you try to ask it a different way?

13 MR. LENDER: Yes.

14 BY MR. LENDER:

15 Q Based on your best understanding in having dealt with Mr.
16 Pignatti as your main contact, you believe he would know the
17 rules as to how and when a Lehman consultant like yourself
18 would get paid?

19 A Referring to my knowledge on this matter, I can only refer
20 on an e-mail that he wrote to Jonathan Rouner somewhere in here
21 which explained to Jonathan Rouner how these things happened,
22 yes.

23 Q So, yes. So he would know the rules then, to your
24 understanding, as to how and when a Lehman consultant would get
25 paid.

1 A My understanding? My knowledge is restricted to the
2 e-mail by Pignatti to Rouner.

3 Q Right. And you also had some --

4 A We may want to look at -- maybe this --

5 Q We might. We may do that.

6 You had some contact with Peter Sherratt as well?

7 A Yes, of course, I had contact with Peter Sherratt.

8 Q And Peter Sherratt was in-house counsel to Lehman in
9 Europe, correct?

10 A Correct.

11 Q And you also --

12 A The senior. The senior. He was the head European
13 counsel.

14 Q Great. And you also had some contact with Ruggero Magnoni
15 but to a lesser degree?

16 A That is correct.

17 Q And Mr. Magnoni also based in Europe?

18 A He is based in Europe.

19 Q Now in this case, you are claiming that you are a creditor
20 of both LBHI and LCPI, correct?

21 A Correct.

22 Q And you filed a motion at the end of 2014 seeking to be
23 allowed to file a claim against LBHI and LCPI more than five
24 years after the bar date, right?

25 A That is correct.

1 Q And the claim you would like to file is based on advice
2 you gave back in November of 2005 where you recommended that
3 Lehman retain its stake in Formula One.

4 A That is not entirely correct. It was based on advice I
5 gave throughout the time period of 2002 through the end of 2005
6 which culminated in the November 5 -- or the November "huge"
7 advice.

8 Q Great. And we're going to look at that, I promise you, in
9 a moment. But for years, you didn't believe you were a
10 creditor of LBHI or LCPI, correct?

11 A That is incorrect.

12 Q Well, you actually thought you were a creditor of Lehman
13 Brothers Europe Limited or LBEL, correct?

14 A That is incorrect. I had no positive knowledge which
15 Lehman entity I was a creditor of. I knew I was a creditor of
16 somebody in the Lehman group that had been represented in my
17 contracts vis-à-vis me by LBEL.

18 Q So you thought perhaps back in 2005, 2006, you might have
19 been a creditor of LBHI?

20 A Possibly. Possibly. But I would have thought that
21 unlikely. I would have thought that this -- I would have
22 thought that this loan would have been made and they're
23 (indiscernible) then booked in some special purpose subsidiary
24 somewhere in the Lehman group. No knowledge where.

25 Q Right. And you thought it's possible, even back in 2005,

1 2006, you could have been a creditor of LCPI, correct?

2 A It's -- I could have been a creditor of anybody in the
3 Lehman group.

4 Q Now there's no question that you did file a claim against
5 Lehman Brothers Europe Limited or I guess we refer to them as
6 either -- they used the word LBEL on more of the formal SIEs.

7 THE COURT: LBEL.

8 MR. LENDER: I'm going to L-B-E-L so I don't mess it
9 up.

10 BY MR. LENDER:

11 Q But you did file a claim in the L-B-E-L bankruptcy,
12 correct?

13 A I absolutely filed a claim in what we call the LBEL
14 bankruptcy.

15 Q And you were on the creditors' committee of Lehman
16 Brothers Europe or L-B-E-L?

17 A I am on the creditors' committee.

18 Q And you filed your claim in the UK proceedings in November
19 of 2013?

20 A That is correct.

21 Q And you ultimately settled your claim with Lehman Brothers
22 Europe, right?

23 A I did.

24 Q For two and a half million pounds?

25 A Correct.

1 Q And L-B-E-L has paid you that full amount, correct?

2 A They have.

3 Q Let me ask you to look at Exhibit 10 in your binder, if I
4 could. Let me know when you're there.

5 A Yep.

6 Q And you'll see this is the consent order that was entered
7 in the L-B-E-L bankruptcy. And attached to that is a copy of
8 the settlement agreement that you signed with Lehman Brothers
9 Europe Limited concerning Formula One, correct?

10 A That is correct.

11 Q And it wasn't until June of 2014 during the course of the
12 UK proceedings that you first thought you might have a claim
13 against LBHI or LCPI, correct?

14 A That is correct.

15 Q Which we know is well after the bar date of September 22,
16 2009 here, correct?

17 A Which I now know is way after the bar date.

18 Q And you knew that the Lehman U.S. entities had filed for
19 bankruptcy back in 2008?

20 A I certainly knew that the Lehman U.S. entities had filed
21 for bankruptcy in 2008.

22 Q And at least prior to filing your motion here, you never
23 filed a claim against LBHI or LCPI, correct?

24 A I -- that is correct.

25 Q You did, however, file a claim, a timely claim, against

1 Lehman Brothers Inc. relating to a currency collar, correct?

2 A That is correct.

3 Q You filed that claim against LBI very soon after the
4 bankruptcy in September of 2008, right?

5 A I'd be surprised that it had been in September 2008. Can
6 I have a look at what you're looking at because we had the
7 discussion about the FEX collar. And the very first thing I
8 did is I terminated the collar. We've been through that
9 earlier today. And I then remember getting --

10 MR. LENDER: Your Honor, may I approach the witness?

11 THE WITNESS: Sure. Please.

12 THE COURT: Yes.

13 MR. LENDER: Here's a copy of his deposition.

14 THE COURT: Yep.

15 MR. LENDER: He may (indiscernible) --

16 THE COURT: Okay.

17 BY MR. LENDER:

18 Q And, Dr. Marsoner, if you would just turn to page 200 of
19 your deposition, line 17 to line 24. Let me know when you're
20 there. Are you there?

21 A Page 200 of my deposition --

22 Q Yes.

23 A -- yes?

24 Q And you see where you were asked the following question:

25 "Q We discussed earlier your claim relating to LBI, LBCC

1 and the collar, do you recall that?"

2 A Yeah.

3 "A I recall it, yes.

4 "Q Do you recall when that claim was submitted?

5 "A That must have been very soon after the Lehman
6 bankruptcy in September of '08."

7 A Yeah. The September --

8 Q Is that correct?

9 A -- 2008 refers to the Lehman bankruptcy.

10 Q Okay.

11 A And very soon after, I think a couple of months after, I
12 must have filed it.

13 Q Okay. Thank you.

14 Now, Dr. Marsoner, when you provided your advice regarding
15 Formula One back in November of 2005 that we looked at, you
16 never discussed with anyone the possibility of being
17 compensated for it, right?

18 A That is wrong.

19 Q Mr. Marsoner, I want to ask if you could turn to page 57
20 of your deposition. Line 24. Let me know when you're there.

21 A 57, 24.

22 Q Line 24. Were you asked this question that you gave this
23 answer:

24 "Q At the point that you were providing this advice, did
25 you discuss with anyone the possibility of being compensated

1 for it?

2 "A I didn't have to. I was a paid advisor. Terms were
3 very clear."

4 That was your testimony?

5 A That was my testimony. That was perfectly consistent with
6 what I just said. The question here is a much narrower
7 question than the one you asked me, with respect. Here it
8 says, "at the point you were providing this advice".

9 Q Okay. And your view was you had an advisory agreement
10 already in place even though it had expired, right?

11 A My view is that I had a seven and a half year advisory
12 relationship. The seven and a half year advisory relationship
13 was documented, at times, in five one-year advisory agreements.
14 The reality was that it was one seamless continuous five and a
15 half year -- or sorry -- seven and a half year relationship.

16 Q Okay. But the agreement that you are relying on in this
17 case to support your claim against LBHI and LCPI is your
18 February 13, 2004 advisory agreement with Lehman Brothers
19 Europe Limited, correct?

20 A Technically, that is not entirely correct because that
21 agreement had not only expired but it was also, you know, --
22 don't know the technical term but doubly invalidated having
23 already expired by the '06 agreement. What I rely on are the
24 rules of the '04 agreement. The rules of the '04 agreement
25 and, as a matter of fact, any other technically expired

1 agreement that was then expired again, those rules governed the
2 interim phases. So it is not the agreement that I rely on;
3 it's the rules of the agreement that I rely on --

4 Q It --

5 A -- which is at least, under English law, a very important
6 distinction.

7 Q It's the content of the 2004 agreement that you're relying
8 upon as the basis for your claim against LBHI and LCPI.

9 A That is correct.

10 Q And there's no dispute, right, that in November of 2005
11 when you provided this advice that we looked at, there was no
12 agreement in force, correct?

13 A Again, not entirely correct. There was no formal
14 agreement in place. There was the overall agreement which is
15 the seven and a half year framework agreement that was very
16 much fully in force.

17 Q Right. And that's because the 2004 agreement that you had
18 signed had expired by the end of that year in December of 2004,
19 correct?

20 A The year agreement itself had expired. Its rules had
21 survived.

22 Q Okay. Let's take a look at Exhibit --

23 A And survived to this day.

24 Q Okay. Well, we'll see. We're going to go through that.
25 Let's look at Exhibit 48 which is a copy of the February 2004

1 agreement.

2 THE COURT: What exhibit number is that?

3 MR. LENDER: Exhibit 28, Your Honor.

4 THE COURT: 4-8?

5 MR. LENDER: 4-8, yep.

6 THE COURT: Thank you.

7 BY MR. LENDER:

8 Q And, Mr. Marsoner -- Dr. Marsoner, the contents of this
9 agreement, Exhibit 48, is the agreement that you are relying
10 upon as the basis for your claims against LBHI and LCPI,
11 correct?

12 A Again, not entirely technically correct. It's one of two
13 things I relied upon. On the one hand, I'm making a quanta
14 meruit claim. And on the other hand, I am making a contractual
15 claim.

16 Q Great. And if you turn to the second page, you'll see
17 that the term of the agreement says that the agreement shall
18 terminate on the earlier of, unless renewed, December 2nd,
19 2004, right?

20 A Sir, where are you --

21 Q Top of page 2?

22 A Yes. Yes. That's exactly what it says.

23 Q So your 2004 agreement had expired more than 11 months by
24 the time you were giving this advice in November of 2005,
25 correct?

1 A That is correct.

2 Q Now if we turn to the last page of Exhibit 48, we'll see
3 the signature block.

4 A Yep.

5 Q And the signatories to this 2004 agreement are you, Dr.
6 Marsoner, and Lehman Brothers Europe Limited, correct?

7 A Correct.

8 Q And that's your signature?

9 A That is my signature.

10 Q Okay. And that's Mr. Pignatti who signed on behalf of
11 LBEL?

12 A Correct.

13 Q And if you go to the first page of the agreement, the
14 address that you listed for yourself in this agreement was an
15 address in Malta, correct?

16 A Correct.

17 Q Now I want to talk a little bit about the compensation
18 section of this agreement, which is paragraph 3. You with me?

19 A Yes. I'm at paragraph 3.

20 Q And paragraph 3 sets forth how much Lehman Brothers Europe
21 is agreeing to pay you under this agreement, correct?

22 A Correct.

23 Q And Section 3.1 states that you will be paid a fee of
24 150,000 pounds within seven days of the execution of this
25 agreement?

1 A Euros, actually.

2 Q Oh. Beautiful. Thank you. 150,000 euros would be paid

3 to you.

4 A Yes.

5 Q And that was paid to you, correct?

6 A I beg your pardon?

7 Q You were paid that amount, correct?

8 A I was paid that amount, yes.

9 Q And then Section 3.2 talks about quarterly fees that would

10 be paid to you under this agreement, right?

11 A Uh-huh.

12 Q You have to verbalize, sir.

13 A Right. Yes.

14 Q And those were paid to you as well, right?

15 A Those were paid to me as well.

16 Q And then if you look through Sections 3 through 8, those

17 provisions identify various transactions that you were working

18 on with Lehman, correct?

19 A Correct.

20 Q And it states how much you --

21 A Sorry. Sorry. Sorry. Not at Lehman. For Lehman.

22 Q For Lehman.

23 A With Lehman.

24 Q Yes. For Lehman.

25 A Not at Lehman.

1 Q Yes. Thank you. And it states how much you're going to
2 be paid for each of these transactions?

3 A Correct.

4 Q So, for example, just to use a couple of examples, if you
5 look at subsection (iv), it lists a Telecom Austria transaction
6 involving a change of control of Telecom Austria or its
7 subsidiary, Wireless Mobile.com, or the merger of the latter?

8 A Correct.

9 Q And then it sets forth the agreed fees that you would be
10 paid for this transaction, right?

11 A Of 20 percent as ever.

12 Q Your answer to my question is yes?

13 A Yes.

14 Q Okay. And then in Section 5, we see another transaction
15 involving Telecom Austria by the company itself or by OIAG. Do
16 you see that?

17 A I see that.

18 Q And then it sets forth the agreed fees you would be paid
19 for this transaction, right?

20 A Right.

21 Q And there are other specific transactions covered by the
22 2004 advisory agreement with LBEL listed as (indiscernible),
23 right?

24 A Correct.

25 Q And nowhere -- nowhere is Formula One listed, correct?

1 A Correct.

2 Q In fact, in none of your advisory services agreement will
3 we see any reference to Formula One as a transaction for which
4 you would be paid, correct?

5 A Correct.

6 Q Now you also have no consulting agreement covering Formula
7 One with LBHI or LCPI as a signatory, correct?

8 A Correct.

9 Q In fact, you have no consulting agreement with LBHI or
10 LCPI as a signatory at all, correct?

11 A Technically, I, again, cannot fully agree because LBEL, as
12 a member of the Lehman group, I believe, was in a position to
13 buy in LBHI and LCPI.

14 THE COURT: Dr. Marsoner, I'll make the legal
15 determinations. I would appreciate if you would answer
16 counsel's questions.

17 So could you ask the question again, please?

18 MR. LENDER: Absolutely.

19 BY MR. LENDER:

20 Q In fact, you have no consulting agreement with LBHI or
21 LCPI as a signatory at all, correct?

22 A I have no formal written agreement with LBHI or LCPI, that
23 is correct.

24 Q Now you claimed on direct that there was a framework to
25 pay you 10 percent, is that right?

1 A Ten percent of firm revenues is the simple version of the
2 framework, correct.

3 Q But there is not a single e-mail or document anywhere in
4 the file where anyone at Lehman agreed to pay you 10 percent
5 for your services for Formula One, correct?

6 A Correct.

7 Q No one specifically said you'll get paid 10 percent for
8 Formula One, right?

9 A With the framework agreement in place, nobody had to say
10 that specifically.

11 Q No one specifically said that you'll be paid 10 percent
12 for Formula One, correct?

13 A With the framework agreement in place, that was not
14 necessary.

15 Q Okay. And there's certainly no document whereby LBHI or
16 LCPI agreed to pay you for Formula One, right?

17 A With the framework agreement in place, again, that was not
18 necessary.

19 Q Okay. Now I want to ask you to take a look at Exhibit 36
20 which is the declaration you filed with this court on December
21 29, 2014. Let me know when you're there.

22 A Yeah.

23 Q And just to confirm, Dr. Marsoner, this is a declaration
24 and that's your signature on the last page?

25 A That is confirmed.

1 Q And in paragraph 8 -- if you can turn there, page 2.

2 A Uh-huh.

3 Q And you see where you talk about this 10 percent rate that
4 we were just talking about in paragraph 8.

5 A Yes.

6 Q And then what you wrote and swore in this affidavit was
7 that " Lehman agreed both orally and by e-mail to this fee in
8 exchange for my Formula One advice." Do you see that?

9 A I see that.

10 Q That's not true, correct?

11 A That is incorrect. This is perfectly true.

12 Q Well, we just discussed that no one ever specifically said
13 to you that you'll be paid 10 percent on Formula One, right?

14 A Mr. Pignatti formally asked me to work on F1. My e-mail
15 exchange, that's the oral part that I meant here. Mr. Bernard
16 and I, in the e-mail correspondence that is well known,
17 confirmed in writing that they were taking my senior advice.
18 Those two things happened against the background of the
19 framework agreement that had been in place for seven and a half
20 years. So for you to stand here and accuse me of having made a
21 false statement in a sworn affidavit to a court is as offensive
22 as the other stuff you have mentioned about the tax position --

23 THE COURT: All right. That's quite enough.

24 THE WITNESS: -- sir, with respect.

25 THE COURT: Dr. Marsoner --

1 THE WITNESS: Sorry. I apologize.

2 THE COURT: I'm sorry.

3 THE WITNESS: I apologize.

4 THE COURT: We're not going to get into an
5 adversarial exchange in response to a straightforward
6 question. So --

7 MR. LENDER: I'll rephrase my question, Your Honor.

8 BY MR. LENDER:

9 Q You said in the affidavit that Lehman agreed, both orally
10 and by e-mail, to this 10 percent fee. But there's no question
11 that no one from Lehman ever said to you that you'll be paid 10
12 percent on Formula One, right?

13 A Nobody had to. The 10 percent were fixed in the framework
14 agreement that lasted for seven and a half years.

15 Q And for the e-mail you're referring to here, the e-mail
16 you're referring to is your e-mail exchange with Tom Bernard in
17 November of 2005?

18 A That is correct.

19 Q Okay. And where -- let's take a look at it, which is
20 Exhibit 2. Let me know when you're there. Dr. Marsoner,
21 Exhibit 2 is the e-mail you are relying upon where you claim
22 that Lehman agreed to pay you 10 percent for your advice with
23 regard to Formula One that we just looked at in your affidavit?

24 A I'm -- yeah. I'm just --

25 THE COURT: Why don't you give Dr. Marsoner a moment

1 to read the whole exhibit?

2 THE WITNESS: Yeah. Let me just --

3 THE COURT: All right?

4 THE WITNESS: Let me just make sure that it contains
5 everything I'm referring to.

6 (Pause)

7 THE WITNESS: That is indeed the e-mail exchange that
8 I am relying on for the contractual aspect of my claim.

9 BY MR. LENDER:

10 Q Okay. But nowhere in this e-mail does Lehman agree to pay
11 you anything for Formula One, right?

12 A I disagree. At the very beginning and saying that I'm
13 continuing to be available for a very modest percentage
14 participation of LB's gain upon eventual sale, "very modest"
15 being interpretable only as to 10 percent of the framework
16 agreement. And further on in the exchange, Tom Bernard says
17 "Thanks, Thomas. That's huge. We are inclined to take your
18 advice and stay in." That is the agreement by e-mail that I
19 have been referring to in this proceeding and in the previous
20 English proceeding.

21 Q What you just testified is your testimony as to Lehman's
22 agreement to pay you 10 percent for Formula One?

23 A The 10 percent, as I'm happy to repeat for the rest of the
24 day if you want me to, was stipulated in the framework
25 agreement and was clear to all --

1 THE COURT: When you say, Dr. Marsoner --

2 A -- parties at all times --

3 THE COURT: I need to --

4 THE WITNESS: I apologize.

5 THE COURT: I'm sorry. When you say the framework
6 agreement --

7 THE WITNESS: Yeah.

8 THE COURT: -- what exactly do you mean?

9 THE WITNESS: I refer to the first discussion about
10 my advisory relationship with Dr. Rydevik, the then head of
11 European investment banking who set out to me the 20 percent of
12 M&A fees, the 10 percent of firm revenues and the 5 percent, if
13 I read something in the gazette, which is how this --

14 THE COURT: So the -- so there's the written
15 agreements and then there's what you view as some overarching
16 agreement that wasn't written down anywhere?

17 THE WITNESS: Well, it was written down in five of
18 the seven and a half years.

19 THE COURT: Okay. All right. Go ahead.

20 MR. LENDER: Okay.

21 BY MR. LENDER:

22 Q So --

23 A It was implemented, if I can try to be more precise --

24 THE COURT: Okay. I just simply wanted to understand
25 when you were referring to the framework agreement what exactly

1 you meant. Thank you.

2 BY MR. LENDER:

3 Q Now what you just referred to is on page Bates number 216
4 where you say "Needless to say, if a fresh face were helpful to
5 facilitate things here, mine continues to be available for a
6 very modest percentage participation in LB's gain upon eventual
7 sale"?

8 A The "fresh face" I did not quote earlier because that was
9 the offer to do even more for what was in place already.

10 Q You were saying that you were available as a fresh face to
11 help for a modest participation fee.

12 A I was making the factual statement that I continued --
13 emphasis on the word "continued" -- to be available as I have
14 been available for the last three years.

15 Q And there is no written acknowledgment anywhere whereby
16 Mr. Pignatti agreed to pay you a very modest percentage for
17 Formula One, right?

18 A There is very specific answer to my senior advice which
19 you find on the e-mail to Pignatti on the 25th where then
20 Bernard says "We're inclined to take your senior advice". The
21 senior advice implies explicitly, in my view, that this is a
22 professional conversation as a paid senior advisor and nothing
23 else.

24 Q I'm going to try my question again. Dr. Marsoner, there
25 is no written acknowledgment anywhere whereby Mr. Pignatti

1 agreed to pay you a very modest percentage for Formula One,
2 right?

3 A I again have to technically disagree because there is a
4 letter that Pignatti was happy to sign in which he said that my
5 services for Formula One were similar to the services for BAWAG
6 PSK for which I was paid 10 percent. So if you need a Pignatti
7 signature next to a 10 percent for Marsoner, you'd find it in
8 that letter.

9 Q Can I ask you to turn to your deposition, page 93, line
10 14? Let me know when you're there.

11 A Sorry. Exhibit --

12 Q Your deposition.

13 A Oh, sorry. My deposition.

14 Q Keep that handy. Page 93, line 14, please. Dr. Marsoner,
15 you there?

16 A I'm there now, yeah.

17 Q Were you asked this question and did you give these
18 answers in response to questions from Ms. Alvarez:

19 "Q Is there written acknowledgment from Pignatti
20 agreeing to pay you a very modest percentage participation in
21 Lehman Brother's gain upon eventual sale?

22 "A There didn't have to be. The terms were clear from
23 the outset.

24 "Q So nothing in writing?"

25 Objection by Mr. Van Tol.

1 "A The course of dealings between Pignatti and me,
2 between Lehman and me was very clearly established. It did not
3 require any further repetition."

4 That was your testimony?

5 A That is indeed correct. This referred to that time again
6 that is in no way inconsistent with the letter Pignatti wrote
7 about the 10 percent years later.

8 Q Okay. Now, Dr. Marsoner, you testified that the inside
9 information you provided about McLaren soon became public. You
10 remember that?

11 A Yes.

12 Q And, in fact, if we turn to the first page of Exhibit 2,
13 we'll see a reference, I don't know, maybe halfway down in an
14 e-mail from you that says, "P.S. Rondenes verbatim in case
15 you've missed it." And then there's a reference to a Bloomberg
16 article. Do you see that?

17 A Yep.

18 Q Is that the reference to how it became public soon
19 thereafter?

20 A That is one of the things I found after the fact.

21 Q And, in fact, the date of the Bloomberg, the Bloomberg
22 article is November 25th, the exact same day that you said you
23 gave this inside information to Lehman, right?

24 A That's what it looks like, indeed, yes.

25 Q Okay. Now --

1 A But neither I nor anybody else had it at the time.

2 Otherwise, I wouldn't have had the responses that I got.

3 Q Well, okay. That's fine. Anyway, in the next e-mail up
4 going back we talked about the fresh face e-mail.

5 A Sorry. Which one?

6 Q The same Exhibit 2. You talked about --

7 A Yeah.

8 Q -- the fresh face e-mail that you were offering.

9 A Yeah.

10 Q And then the next e-mail up, the one that you forwarded to
11 Mr. Bernard, you actually made another offer to Lehman,
12 correct?

13 A That is correct.

14 Q And in this offer if we look in the third paragraph down
15 on page 215 you said:

16 "If conversely you want to get Lehman Brothers out of the
17 Formula One headlines or feel your relationship with Bernie has
18 become too bad, a Marsoner family company previously involved
19 in consumer products would happily consider taking it on if it
20 comes with a to be agreed financing package fairly sharing
21 risks and rewards."

22 A Yes. That is correct.

23 Q So in addition to providing a fresh face, you separately
24 actually offered to buy Lehman out, right?

25 A Exactly. There were two offers in addition to the extent

1 advisory relationship that I made, neither of which were
2 accepted. One was the fresh face which would have been
3 involvement of myself in the negotiations as opposed to just
4 background advice, and the second one was that (indiscernible)
5 management and a family company that was a client of Lehman's
6 would be prepared to take the stake.

7 Q And this offer to buy out Lehman obviously never happened,
8 right?

9 A That did not happen. No.

10 Q Now, Dr. Marsoner, you understand that it's very important
11 for a consultant and Lehman, the companies you're working with
12 within Lehman to agree upfront on whether and how much of a fee
13 you'll be paid by Lehman, right?

14 A Once revenues crystallize.

15 Q Actually, even before revenues are crystallized you
16 understood it's important to get that agreement upfront so that
17 the consultant could have a claim later for payment against
18 Lehman, right?

19 A The way it worked is that we went after so many things and
20 so many things were so time pressured, like this F1 thing at
21 the time that quite often it was just not possible to even
22 think about documenting anything. So, therefore, the
23 documentation standard which you will see Mr. Pignatti
24 explaining to Mr. Rouner is one where things get documented
25 once revenues crystallize and in F1 that was in 2012.

1 Q Let's take a look at an example. Maybe this will help
2 speed this a little along. I want -- I would ask you to take a
3 look at Exhibit 58, 5-8 in your book. Let me know when you're
4 there.

5 A I am on 58.

6 Q Yeah. And you can see at the top this is an e-mail
7 exchange between you, Thomas Marsoner, and Jonathan Rouner and
8 Vittorio Pignatti dated October 17th, 2005.

9 A Correct.

10 Q So this is basically a little more than a month before the
11 Bernard e-mail that we've spent some time talking about today,
12 correct?

13 A Yes.

14 Q And do you see at the bottom of Trial Exhibit 58 at the
15 second to last line there's a discussion about a transaction
16 called Magna. Do you see that?

17 A Yes.

18 Q And in the top e-mail you respond to Mr. Rouner and you
19 say in the second paragraph, "This may be the opportune time to
20 bring up the small matter of my advisory fees." Do you see
21 that?

22 A Yeah.

23 Q And the -- and then you say in the last sentence, "The
24 advisor, on the other hand, is well advised to have the
25 agreement in place before Lehman Brothers gets signed up." Do

1 you see that?

2 A I see that.

3 Q And the reference to advisor here is a reference to you,
4 correct?

5 A Correct.

6 Q And the agreement in place you're referring to is an
7 agreement on the amount of your advisory fees, right?

8 A Correct.

9 Q Okay. Now I would ask if we can turn to Exhibit 49 which
10 is the next advisory agreement that you signed with Lehman
11 Brothers Europe.

12 THE COURT: Exhibit number was?

13 MR. LENDER: 49, Your Honor.

14 THE COURT: 49. Thank you.

15 BY MR. LENDER:

16 Q Dr. Marsoner, is Exhibit 49 a copy of the next agreement
17 that you signed with LBEL after the 2004 agreement we just
18 looked at expired?

19 A Yes.

20 Q And, again, if we look at the signature block which is the
21 last page we'll see that that's your signature, Thomas
22 Marsoner?

23 A Yes.

24 Q And it's signed by Lehman Brothers Europe Limited?

25 A That is correct.

1 Q And, Dr. Marsoner, you stand by the terms of this
2 agreement, right?

3 A Yes. Of course.

4 Q Thank you.

5 Now in the second paragraph of the 2006 agreement on
6 the very first page do you see in the second sentence, second
7 paragraph where it says:

8 "By executing this agreement the consultant acknowledges
9 that he will not be entitled to any payments or other rights
10 under the executive advisory services agreement between the
11 consultant and Lehman Brothers dated 13 February 2004, the
12 prior agreement."

13 A I see that.

14 Q And that's a reference to the agreement whose contents you
15 say you're relying upon as the basis for your claim against
16 LBHI and LCPI, correct?

17 A I replied to that before. I'm very happy to do that
18 again. The --

19 Q Can you first answer my question and then you can explain?

20 A Sorry. The 2004 agreement had expired. It didn't even
21 have to be killed again here. In the interim period its
22 provisions survived. That was the way it worked throughout the
23 seven and a half years.

24 Q I'm going to try it again, my question. The 2004
25 agreement that you acknowledged in this paragraph is the same

1 agreement that you are relying upon its contents for as the
2 basis for your claim against LBHI and LCPI for Formula One,
3 right?

4 A That is absolutely correct.

5 Q Thank you.

6 Now if you look at paragraph 3 of the agreement you'll see
7 a section that lists compensation payable to the consultant?

8 A Yeah.

9 Q And you see again it lists a number of transactions?

10 A Yeah.

11 Q And if you look at paragraph 6 you'll see that the Magna
12 transaction we just discussed is identified in this agreement,
13 correct?

14 A That is actually incorrect. That is a different Magna
15 transaction from the one here.

16 Q Okay. We see it, but it -- so this is a different Magna
17 transaction than the one we were just looking at?

18 A There were a whole number of Magna transactions.

19 Q Okay.

20 A And I certainly remember -- that I do not remember in
21 detail, but I certainly remember that not all the Magna
22 transactions were documented.

23 Q Do you know if this Magna transaction here is the same one
24 we were just looking at?

25 A I do not remember which one the Magna transactions we had

1 called project (indiscernible). There were a number of
2 (indiscernible) transactions.

3 Q And when you testified on direct that you worked on a
4 Magna transaction and it wasn't covered by an agreement, you
5 may have been referring to this Magna transaction or it may
6 have been a different Magna transaction?

7 A What I said in direct, at least what I remember saying in
8 direct, is that there were a number of Magna transactions and
9 I do not believe that they were all documented.

10 Q Actually, what you said on direct was that you worked on
11 Magna and it wasn't covered by an agreement. That was your
12 testimony, right?

13 A I believe if you look at the record you will find that I
14 said what I just said, which is that I do not remember -- I
15 remember working on a number of Magna transactions and I said
16 that I did not think that they were all documented. I said
17 already this morning, if you look at the record, that one may
18 have been documented. Whether this one is the same as that one
19 I do not know. What I remember is that there were several.

20 Q So, Dr. Marsoner, were you paid on this Magna transaction
21 that we're seeing here in the 2006 agreement?

22 A I was paid on no Magna transaction because no Magna
23 transaction ever was successfully completed by Lehman Brothers,
24 hence the imprecision of my memory. If --

25 Q Well, Dr. Marsoner --

1 A -- we have documents I might remember it better.

2 Q So your -- Dr. Marsoner, your testimony in your direct
3 that transactions were only included in advisory agreements
4 when revenues became a visible, that's not correct, right?

5 A That is completely correct. I think here you see
6 somewhere that there was an estimate of this one of something
7 like a ten million visible potential fee which is how it then
8 got documented.

9 Q Well, Dr. Marsoner, Magna was included as a covered
10 transaction in the 2006 agreement even though revenues had not
11 yet been visible, right?

12 A Well, there's a ten million number somewhere. In this
13 documentation it was visible that Lehman was going to make ten
14 million or more on it. That is how it got into the '06
15 agreement.

16 Q Okay. Let me ask you this --

17 THE COURT: But, Dr. Marsoner, I need to -- I'm
18 sorry. I just -- one of the things that you said much earlier
19 today was that you didn't think of making a claim in the Lehman
20 LBHI or LCPI case because there hadn't been any revenue, right?
21 You said that this morning?

22 THE WITNESS: I made --

23 THE COURT: You explained --

24 THE WITNESS: I --

25 THE COURT: -- that one of the reasons you didn't

1 think of making a claim until the time that you did, five years
2 after the bar date, was because you didn't know how valuable
3 this was to Lehman, right?

4 THE WITNESS: F1 could have been zero net revenue
5 until 2011.

6 THE COURT: But --

7 THE WITNESS: That is correct.

8 THE COURT: But the point that counsel's exploring
9 here, which I would like to follow up on, is that this
10 agreement reflects a hypothetical sliding scale. It posits a
11 possible return and it sets forth a ladder of compensation in
12 the event that an event -- that a transaction becomes
13 profitable.

14 So my question is why is that not absolutely
15 applicable to Formula One as well? The -- obviously I think
16 one thing is crystal clear. Lehman was not in the business of
17 being a charity. It was in transactions to make money.

18 THE WITNESS: Yes.

19 THE COURT: Right?

20 THE WITNESS: Yes.

21 THE COURT: So that's what they were all about. So,
22 therefore, the fact that it hadn't yet made money has nothing
23 to do with whether or not they could have agreed to a ladder of
24 compensation to compensate you for your advisory services,
25 correct?

1 THE WITNESS: Absolutely. The only difference is
2 that a 10 million revenue number was visible in the Magna
3 thing as is shown in one of the e-mails here from Pignatti to
4 (indiscernible). The moment an order of magnitude of revenues
5 becomes visible, it makes sense to document it formally.

6 THE COURT: I see. But --

7 THE WITNESS: That's the difference --

8 THE COURT: But one more. One more.

9 THE WITNESS: -- Your Honor.

10 THE COURT: But notwithstanding that, in this exhibit
11 that counsel is taking you through, each of these or many of
12 these named transactions have a cap.

13 THE WITNESS: That was introduced later. That was
14 introduced only for transactions going forward in the 2006
15 agreement. All the old transactions did not get that cap.

16 THE COURT: I see.

17 THE WITNESS: So the cap is only going forward for
18 new transactions from 2006.

19 THE COURT: Okay. Go ahead.

20 MR. LENDER: Okay.

21 THE COURT: I'm sorry.

22 BY MR. LENDER:

23 Q Now in Section 3 if you look at paragraph 3 and 4, we also
24 see the two Telecom Austria transactions that we talked about
25 in connection with the 2004 agreement, right?

1 A Three and four, yes.

2 Q So transactions that you were working on in 2004, if you
3 hadn't been paid yet, got carried over into the 2006 agreement.
4 That's two examples of it, right?

5 A When revenues were visible that was the case. That -- it
6 -- the consideration was always are there visible revenues.
7 Then they made it in here. When the revenue picture was
8 completely uncertain they were not documented.

9 Q Well, Dr. Marsoner, the Telecom Austria, both transactions
10 even though revenues weren't yet visible were included in the
11 2004 agreement and the reason why it was carried over again
12 into the 2006 agreement was because you hadn't yet been paid,
13 right?

14 A May I just look at whether that's really exactly the same
15 than --

16 Q Absolutely.

17 A -- the Austrian agreements?

18 Q That's the reason why I went over them with you --

19 A I mean, what --

20 Q -- but, you know, let's do it again.

21 A Because things obviously evolved. Sorry. Where's the
22 2004 agreement?

23 Q That's okay. I'm going to find it for you. Are you
24 looking at the prior Exhibit 48?

25 A 48. Right. Yeah.

1 Q And paragraph 4 was Telecom Austria with Mobile.com.

2 Paragraph 5 was Telecom with OIAG, and those two were carried
3 over into the 2060 agreement.

4 A Well, in the shortness of time I only noticed that the
5 paragraph 4 in the '04 agreement is about twice as long as the
6 paragraph 4 in the '06 agreement, and that -- I mean, this is
7 not the same text. It's just -- in these two paragraphs it's
8 not the same text. Things have evolved and what was visible in
9 one year was visibly differently in another year. But you're
10 absolutely right. When there were visible revenues around that
11 we put them into the formal agreements.

12 Q Okay. We can all compare the agreements later. But the
13 one thing that we -- you and I can both agree on is nowhere in
14 paragraph 3 of the 2006 agreement will I see a reference to
15 Formula One, right?

16 A That is absolutely correct. We are in full agreement.

17 Q Now during your direct exam you mentioned BAWAG as an
18 example where Lehman paid you even though BAWAG was not listed
19 on an advisory agreement and allegedly not documented, right?

20 A The acquisition of BAWAG by Cerberus was in no advisory
21 agreement and I was paid for it.

22 Q And for BAWAG, as counsel showed you, you were sent an e-
23 mail whereby Lehman agreed to pay you, right?

24 A I was sent an e-mail that only served to mutually agree
25 the numbers.

1 Q Let's take a look at Exhibit 5 one more time.

2 A The Graham Wilson e-mail?

3 Q Yeah. Thank you. Let me know when you're there. I know
4 I -- I apologize if I keep jumping you through the book.

5 A I'm alright. Yes.

6 Q Trial Exhibit 5 is an e-mail from Graham Wilson to you,
7 Thomas Marsoner, dated June 13th, 2007?

8 A Yes.

9 Q And Graham Wilson was the chief administrative officer of
10 Lehman in Europe?

11 A He was a senior administrator in the investment banking
12 department of Lehman in Europe.

13 Q In Europe. Okay. Thank you.

14 And what Mr. Wilson wrote was, apologies for the delay.

15 Am now authorized to agree this with you and move forward with
16 processing the payment, right?

17 A That is correct.

18 Q And, Dr. Marsoner, there is no e-mail whereby LBHI or LCPI
19 agreed to pay you for Formula One, right?

20 A LBHI paid me for this.

21 Q Did you hear my question?

22 A Sorry. I probably missed it.

23 Q My question was there's no e-mail whereby LBHI or LCPI
24 agreed to pay you for Formula One, right?

25 A Technically I do not entirely agree because I do believe

1 that my e-mail exchange with Tom Bernard constitutes such an
2 agreement by e-mail.

3 Q Okay. Now you've also read Mr. Pignatti's deposition?

4 A Yes, I believe I have. Yes.

5 Q And we know that Mr. Pignatti was someone that you
6 approached about filing a letter on your behalf in this case,
7 right?

8 A Correct.

9 Q And so since you read Mr. Pignatti's deposition you know
10 that he testified that you were only paid on BAWAG because
11 Lehman and you came to an agreement regarding how much you
12 would be paid for your help there, right?

13 A Absolutely incorrect. Mr. Pignatti was not involved in
14 BAWAG.

15 MR. LENDER: Your Honor, may I just approach for --

16 THE COURT: Yes. Is this Mr. Pignatti's deposition?

17 MR. LENDER: Yes, it is. Thank you. This is the
18 designated testimony.

19 THE COURT: Okay.

20 BY MR. LENDER:

21 Q And I would ask you if you wouldn't mind, Dr. Marsoner, to
22 turn to page 67, line 4 to 67, line 8 of Mr. Pignatti's
23 deposition.

24 A I can see line 4 here. Yes.

25 Q And Mr. Pignatti was asked the following question and gave

1 the following answer:

2 "Q So when the BAWAG transaction was completed Lehman
3 and Dr. Marsoner came to an agreement regarding how much he
4 would be paid for his help?

5 "A Yes."

6 A Well, this is something that Ms. Alvarez said.

7 Q I'm sorry.

8 A The agreement between Lehman and Dr. Marsoner, as you just
9 read, was something that Ms. Alvarez said.

10 Q Okay.

11 A Okay.

12 Q We can move on. Exhibit 6 --

13 A Mr. -- sorry. Mr. Pignatti was not involved in that
14 aspect of the BAWAG transaction so he couldn't have known what
15 that question meant precisely.

16 Q Your testimony is that Mr. Pignatti was incorrect when he
17 answered yes to that question in his deposition?

18 A My testimony is that the correct interpretation of the yes
19 that Pignatti gave is what you find in the Graham Wilson e-
20 mail, I am now authorized to agree this with you. He couldn't
21 know more about it because he was not involved in the
22 acquisition of BAWAG by Cerberus.

23 Q Okay. Exhibit 6, you mentioned this e-mail with Jeremy
24 Isaacs during your direct.

25 A Yes, I did.

1 Q Let me know when you're there.

2 A Yes, I did.

3 Q And Jeremy Isaacs was the chief executive officer of
4 Lehman Brothers in Europe?

5 A He was.

6 Q And to be clear what you were -- I think what you said you
7 were doing was you were sort of laying the groundwork for an
8 eventual fee claim here?

9 A Correct.

10 Q But you never told Jeremy Isaacs that you were expecting
11 to get paid for Formula One, right?

12 A I think I implied that very clearly in what I said. Yeah.

13 Q But you didn't ever tell Jeremy Isaacs that -- explicitly
14 that you were expecting to get paid for Formula One, right?

15 A I believe I told him in very politely and implicitly.

16 Q Okay. Exhibit 31, another e-mail you were shown. And now
17 this is an e-mail that you sent to Allyson Carine at Barclays
18 Capital in October of 2008?

19 A Correct.

20 Q And this is an e-mail where you were telling Ms. Carine at
21 Barclays that you were walking away from your obligations to LB
22 Commercial Corp or LBCC concerning and FX column?

23 A For cause. They had walked away from their obligations to
24 me.

25 Q Okay.

1 A So I, on the reciprocal basis, terminated.

2 Q And is it your testimony that -- I'm sorry. Is it your
3 claim that an e-mail that you sent to Barclays Capital about
4 LBCC should have put LBHI and LCPI on notice of your address in
5 Austria?

6 A Yes, it is my claim. Yes, it is my claim that this is an
7 e-mail that went to people I had known as LBHI people,
8 specifically employees of its subsidiary LBI for many years.
9 So this was, as far as I was concerned, an e-mail to Lehman
10 Brothers in New York where LBI was the broker/dealer and LBHI
11 was the holding company which holding company had just sold LBI
12 to Bar Cap. So I do believe that by sending this e-mail I told
13 the New York Lehman system yet again what my address was.

14 Q Do you have any evidence that this e-mail was ever
15 forwarded to anyone at LBHI or LCPI and included in the 350
16 billion pages of data that Lehman had?

17 A I have no such evidence.

18 Q Do you have any evidence that anyone at LBHI or LCPI was
19 aware of this e-mail at the time it was coming up with its list
20 of potential creditors?

21 A I have absolutely no evidence for that. No.

22 Q Okay. Now, Dr. Marsoner, in connection with filing your
23 motion to seek to file a late claim here you asked a number of
24 former Lehman employees to write letters on your behalf?

25 A Correct.

1 Q And one person you asked to write a letter on your behalf
2 was Mr. Pignatti, your main contact at Lehman Brothers Europe
3 Limited, right?

4 A That is right.

5 Q And Mr. Pignatti, we know from your testimony, had
6 submitted a letter on your behalf for Formula One in connection
7 with the Lehman Brothers EL bankruptcy, right?

8 A Right.

9 Q Now in -- on your direct you said that Hogan Lovells
10 prepared the first draft of that letter, right?

11 A That's right.

12 Q But that's not true, correct?

13 A To the best of my knowledge that is true.

14 Q The truth is that you prepared the first draft of that
15 letter, right?

16 A No. I got that from Hogan Lovells.

17 Q Can I ask you to take a look at page 166 of your
18 deposition, please?

19 A 166 of my deposition?

20 Q Line 17. Let me know when you're there.

21 A 166 of my deposition. Yes.

22 Q Were you asked this question and were you given this
23 answer. You were talking about Mr. Pignatti's letter and then
24 you were asked:

25 "Q Did you prepare this letter?

1 "A I, as in the two other cases, prepared a convenience
2 draft for him inviting him to mark it up in whatever way he
3 felt like it."

4 A Yeah. By instructing my lawyers to draft it I prepared
5 those convenience drafts. Of course the actions of my lawyers
6 in this case are my actions, obviously.

7 THE COURT: Okay. We're going to get this straight.

8 MR. LENDER: Yeah.

9 THE COURT: Okay. We're going to get this straight.
10 I want to know who drafted the letter. Did you --

11 THE WITNESS: Hogan Lovells.

12 THE COURT: -- draft the letter or did someone else
13 draft the letter?

14 THE WITNESS: I asked Hogan Lovells to --

15 THE COURT: No. Mr. -- Dr. Marsoner, you need to
16 answer my question.

17 THE WITNESS: I'm sorry.

18 THE COURT: Who drafted the letter? Who literally
19 sat down with a pen and a piece of paper or a computer or a
20 typewriter and put the words on the page? Who --

21 THE WITNESS: Hogan Lovells.

22 THE COURT: -- did that?

23 THE WITNESS: Hogan Lovells, Your Honor.

24 THE COURT: Thank you.

25 BY MR. LENDER:

1 Q And, Dr. Marsoner, when you provided that first draft to
2 Mr. Pignatti his reaction was that he couldn't sign what you
3 had sent to him because he was worried about committing
4 perjury, correct?

5 A I had told him in my cover letter to mark it up however he
6 want -- he saw fit. He did write something back which said
7 what you just said, which can only have been based on a
8 misunderstanding.

9 Q Let's take a look at that e-mail exchange if we could.

10 MR. LENDER: This is Exhibit 51, Your Honor.

11 BY MR. LENDER:

12 Q Dr. Marsoner, Exhibit 51 is a series of e-mails that you
13 produced in this case, correct?

14 A Correct.

15 Q And I want to first start at the bottom of page Marsoner
16 19.

17 A At the bottom of page --

18 Q Okay. You're at the bottom --

19 A -- Marsoner 19. Yes.

20 Q Okay. You see it? The bottom of 19 to the top of
21 Marsoner 20 you send a draft of the letter to be submitted to
22 this Court to Vittorio Pignatti dated January 14th, 2015. Do
23 you see that?

24 A Yeah.

25 Q And then if you go up in the e-mail on January 28th, 2015

1 you resent it to Mr. Pignatti?

2 A Correct.

3 Q And what we see is -- the next e-mail is Mr. Pignatti's
4 response on January 31st, 2015, right?

5 A I see that.

6 Q And what he says is:

7 "Dear Thomas, I can't risk -- I can't sign risking perjury
8 sign a statement that presents facts that I was not involved
9 with like the matters relating to the sale to CVC of LB stake
10 in Formula One. People who are involved have a different
11 recollection and if asked by the Court will air it. Not sure
12 there is much upside for you, but I do see some downside.
13 Sorry. V."

14 Right?

15 A I can see that.

16 Q And now, Dr. Marsoner, what I would like to do --

17 MR. LENDER: And, Your Honor, just to make this a
18 little easier so we're not flipping back, I want to show Dr.
19 Marsoner a copy of the draft and the final letter so we can see
20 what changes were made.

21 THE COURT: Sure.

22 THE WITNESS: Sorry. May I just finish answering
23 your question?

24 MR. LENDER: I think you did, but if you want -- if
25 there's something else you want to share, by all means.

1 THE WITNESS: Thank you very much.

2 I said earlier there must have been a
3 misunderstanding on this and the misunderstanding is right here
4 because I wrote explicitly, check to confirm it reflects
5 reality accurately. Mark it up wherever you think it might
6 not. So I invited him to do whatever he thought made this
7 draft more accurate in my cover letter to him.

8 MR. LENDER: Okay. Thank you.

9 BY MR. LENDER:

10 Q Dr. Marsoner, just to make this easier so we don't have to
11 flip through the books, what I'm going to hand you is Trial
12 Exhibit 42 which were the letters that were submitted to the
13 Court that counsel already showed you, and then a copies of the
14 draft that we understand were provided by you to the letter.

15 Okay. So, Dr. Marsoner, what you should have before
16 you, which I hope you do, is again the draft -- we're going to
17 start off with Mr. Pignatti's since that's what we're talking
18 about now. So Trial Exhibit 63 is the draft and then attached
19 to Trial Exhibit 42 is the actual copy as Mr. Pignatti
20 submitted it. Okay. So let me know when you have those before
21 you.

22 A I have those before me.

23 Q Okay. Now I want you to look at the paragraph -- let's
24 make sure we're all on the same page. The paragraph one, two,
25 three, four, five down, the paragraph that starts with, with

1 regards to the investment in Formula One.

2 A I can see that.

3 Q And in the draft that you provided, Trial Exhibit 63, the
4 last line that you included was that Lehman accepted Dr.
5 Marsoner's requested remuneration by e-mail and orally. Do you
6 see that?

7 A I see that.

8 Q You may recall that that was a sentence that was very
9 similar to the affidavit that you submitted with the Court that
10 we looked at earlier. Do you remember that?

11 A I remember that.

12 Q And if you look at the actual letter that was submitted to
13 Judge Chapman that sentence was taken out, correct?

14 A I can see that. Yeah. I can see -- we can all see that
15 it's out.

16 Q Okay.

17 A Yes.

18 Q And then if we turn to the very last paragraph you'll see
19 that the draft has a sentence that says, it was always my
20 understanding that Lehman would pay Dr. Marsoner ten percent of
21 Lehman's gross revenues from the F1 investment. Do you see
22 that?

23 A I see that.

24 Q And, again, that sentence was eliminated in the letter
25 that was submitted to the Court, correct?

1 A That is correct. However, the ten percent comparison of
2 the line above he let stand.

3 Q Okay. And nowhere in your draft that you supplied to Mr.
4 Pignatti or in the final does the letter say that LBHI or LCPI
5 ever agreed to pay you in connection with Formula One, right?

6 A That's correct.

7 Q Now you also approached Peter Sherratt, who you said was
8 the senior lawyer to Lehman in Europe to see if he would help
9 you in connection with the LBEL filing, right?

10 A He was the senior lawyer of Lehman in Europe. That is
11 correct.

12 Q And he declined to help you, correct?

13 A He declined to help me. Correct.

14 Q And if you turn to Marsoner 25 which is in Exhibit 51,
15 that e-mail chain.

16 A Exhibit --

17 Q Exhibit 51?

18 A -- 51. Yes. Sorry. Exhibit 51 in the big book?

19 Q Yeah. Yes, please.

20 A All right. Which specific page, please?

21 Q Page 20 -- Marsoner 25, the bottom --

22 A Oh.

23 Q -- of page 51.

24 A All right.

25 Q Are you there?

1 A Yes. I see it.

2 Q Okay. And this is a time when you were trying to get
3 Peter Sherratt to help you in connection with your claim that
4 you were filing in the LBEL bankruptcy, right?

5 A That is correct.

6 Q And what we see in the middle of the page on page Marsoner
7 25 is Mr. Sherratt's response where he says to you:

8 "My view is that the claim on LBEL isn't justified. We
9 both know there was no agreement to pay you relating to Formula
10 One. You are a highly intelligent and meticulous person and
11 have -- and would have put in a claim years ago if you believed
12 in it. I do feel a lot of loyalty to old colleagues especially
13 those I've known for a very long time like you. But helping
14 on the claim would not only be wrong, but involve giving false
15 evidence which is, of course, a criminal offense in England."

16 Do you see that?

17 A I see that it continues with:

18 "The lie Linklaters have spoken to Tom and Christian who
19 share the view the claim is unjustified. There's documentation
20 in this file that shows that that part of this paragraph is a
21 flat lie."

22 Q Okay. But the concern about trying to get you to say
23 something untruthful, that's the same concern that we just saw
24 from Mr. Pignatti, right?

25 A It seems to be a similar concern. That is correct.

1 Q Now you also approached Ruggero Magnoni to write a letter
2 on your behalf?

3 THE COURT: Could you -- before you move on --

4 MR. LENDER: Yes.

5 THE COURT: -- Dr. Marsoner, if you could look down
6 at the very bottom of page 26 of this e-mail where it looks
7 like this thread began on Tuesday, March 4th.

8 THE WITNESS: Yes.

9 THE COURT: From you to Mr. Sherratt, F1 past and
10 future.

11 THE WITNESS: Yes.

12 THE COURT: Hi, Peter. You see where I am?

13 THE WITNESS: Yes. I see that.

14 THE COURT: Would you have time for me to come see
15 you for half an hour next week to chat about F1 matters of
16 potentially mutual interest. Do you see that?

17 THE WITNESS: Yes. I see that.

18 THE COURT: What did you mean by that? What's
19 the --

20 THE WITNESS: He was --

21 THE COURT: -- mutual interest?

22 THE WITNESS: He was still on the board the --

23 THE COURT: Of --

24 THE WITNESS: Of the F1 companies. So the mutuality
25 I meant was that I could, as ever, tell him lots of things

1 about F1 that he didn't know and what I was looking for him to
2 give me is obvious.

3 THE COURT: So in 2014 --

4 THE WITNESS: Yeah.

5 THE COURT: -- you were -- this was an offer that you
6 were trying to gain an -- a visit with him --

7 THE WITNESS: Yes.

8 THE COURT: -- so you could give him additional
9 inside information about F1?

10 THE WITNESS: To give him additional information that
11 he had in the past described as very, very useful. Yes. That
12 was -- I had no expectation, Your Honor, that he would just see
13 me by when I told him I need something from you not having
14 talked to him for a while. So I thought the way to best phrase
15 that is let's have a chat about an area that we both have an
16 interest in. I can tell you a lot about what's going on in
17 racing circles and can you please help me. That was what
18 mutual interest here was intended to say.

19 (Pause)

20 THE COURT: Can you explain to me -- I'm sorry.

21 MR. LENDER: Please. Absolutely.

22 THE COURT: Can you explain to me, if you follow the
23 chain up in time --

24 THE WITNESS: Uh-huh.

25 THE COURT: -- he then says, kind of you to offer to

1 travel, but this is so cryptic. Could you be more specific.

2 THE WITNESS: Uh-huh.

3 THE COURT: And then you say, not cryptic at all, but
4 obvious. Past, I greatly appreciate fully understanding your
5 perception of my role, future scenarios going forward.

6 THE WITNESS: That's exactly what I was trying to
7 explain, the mutual interest was before.

8 THE COURT: I see. So on the claim he says -- Mr.
9 Sherratt responds to you and says, the claim on LBEL isn't
10 justified and, two, I don't really want to meet to talk about
11 the investment and see it crop up again in litigation so I'll
12 pass. Okay.

13 THE WITNESS: That --

14 THE COURT: Thank you.

15 THE WITNESS: -- this is --

16 THE COURT: All right. I understand now. Thank you.

17 BY MR. LENDER:

18 Q So you also mentioned you approached Ruggero Magnoni to
19 write a letter on your behalf?

20 A That is correct.

21 Q And you provided Mr. Magnoni a draft?

22 A I certainly provided Mr. Magnoni a draft which had been
23 prepared for me by Hogan Lovells for purposes of this
24 proceeding.

25 Q And he signed -- I think we covered this before, but he

1 signed exactly what you sent him. He didn't --

2 A He signed exactly what I sent him.

3 Q And you're currently in business with Mr. Magnoni, this
4 company we've heard, M&M Capital?

5 A We share expenses. That is correct.

6 Q And you've been in business with him since 2013?

7 A That is correct.

8 Q Now you also mentioned a conversation you stated you had
9 with Tom Bernard where, tell me if I got this wrong, but I
10 think what you said is he told you that you should get paid on
11 Formula One? Is that what you stated --

12 A Well, I think --

13 Q -- Tom Bernard told you?

14 A I -- this is, sorry, by your standards a highly un-
15 technical way of putting it. What Tom Bernard said is what he
16 ultimately wrote. So there's nothing more, nothing less than
17 the letter he wrote for purposes of the preparation of this
18 trial. The other major Tom Bernard interaction was the one we
19 just had a long conversation about.

20 Q So just so there's no confusion. Maybe I misheard your
21 testimony. Your testimony, just so we're clear, is that the
22 full extent of what Tom Bernard had to say about Formula One
23 was set forth in the letter that he submitted in terms of what
24 he knew about it?

25 A For purposes of disproving what Peter Sherratt claimed and

1 to support me in this proceeding as much as he saw fit, that's
2 what he wanted to write, felt like writing, is prepared to talk
3 about in deposition if necessary. Independent thereof, I take
4 nothing back of what I said about the original e-mail exchange
5 with him --

6 Q Fair enough.

7 A -- in 2005.

8 Q But Tom Bernard wasn't really involved in the details of
9 your Lehman relationship, right?

10 A That is precisely why the letter he wrote is much less
11 specific than the ones written by Magnoni and Pignatti.

12 MR. LENDER: Your Honor, I just have one short topic
13 left. Should I --

14 THE COURT: Okay.

15 MR. LENDER: -- just finish up?

16 THE COURT: Oh, yeah. I think so.

17 BY MR. LENDER:

18 Q I want to talk to you briefly about the bar date notices.

19 A Yes.

20 Q You understand that copies of the bar date notices were
21 sent to you at a number of different addresses that you had
22 provided to Lehman over the years, right?

23 A That's correct.

24 Q For example, we saw earlier that you included a --

25 A Oh, sorry. Sorry. Sorry. Forgive me. There were four.

1 In one case that's clearly not correct because it's Lehman's
2 own address which obviously I have never provided to Lehman.

3 Q That's the Schedule G.

4 A That's the Broad Gate address. That -- I did not -- I
5 never provided that to Lehman.

6 Q I'm talking about the three that you did provide to
7 Lehman.

8 A Yes.

9 Q So we saw earlier that you included a Malta address in
10 your 2004 consulting agreement with Lehman Brothers Europe?

11 A That's right.

12 Q And this was an address of a friend of yours in Malta?

13 A Correct.

14 Q And the reason why you included a Malta address, I think
15 what you said was for cosmetic tax purposes?

16 A Yes.

17 Q You were including a Malta address because you were trying
18 to support your argument as to why you shouldn't have to pay
19 taxes in Austria and the U.K. in connection with that work,
20 right?

21 A That's technically incorrect. I wanted the invoice to
22 reflect the reality that has since been audited and found to
23 have been correct that these were offshore revenues that are
24 perfectly legal under U.K. tax law not to be taxable.

25 Q But when you say cosmetic tax purposes, what you mean is

1 you didn't want a consulting agreement or an invoice, you
2 wanted those to say that you lived in Malta because you didn't
3 want there to be a document out there stating that you lived
4 in Austria or the U.K. right?

5 A That is manifestly incorrect with respect of my five
6 consulting agreements with Lehman, three have my Austrian
7 address.

8 Q But --

9 A In '04 I felt like for prudence purposes I should vary
10 that to reflect the, I think peripatetic is the English word
11 nature of my life; that I was sometimes here, sometimes there.
12 But that these for U.K. tax purposes were also looked like what
13 they were which is offshore transactions and offshore revenues
14 for me --

15 Q But --

16 A -- perfectly legal and not --

17 Q But the point --

18 A -- taxable.

19 Q But the point is so that you're not taxed in the U.K. on
20 those revenues, right? Isn't that the whole point?

21 A The -- I would have not been taxed in the U.K. on those
22 revenues whatever address I had put on this because the
23 substance of where I was and where I worked and how many days I
24 spent here and there has been audited in great detail. I just
25 wanted to make it cosmetically, you know, more closely

1 reflective of reality.

2 THE COURT: Well, what's the --

3 THE WITNESS: I was actually --

4 THE COURT: What's the reality again that it was
5 reflective of?

6 THE WITNESS: The reality is that these were offshore
7 revenues for me and that, the Austrian address, Your Honor,
8 would actually have been perfectly good enough for
9 it --

10 THE COURT: Okay. But I want to hear about the Malta
11 address.

12 THE WITNESS: Yeah.

13 THE COURT: What -- was that a home you owned?

14 THE WITNESS: No. That's an Austrian friend of mine
15 who had a home in Malta that he used for legal optimization of
16 Austrian --

17 THE COURT: Okay.

18 THE WITNESS: -- and U.K. --

19 THE COURT: And you stayed at that home at a certain
20 point in time?

21 THE WITNESS: I went to Malta at one point at that
22 time and he kindly said that, after he had told me that he used
23 this address to make everything look as clean as it was, that
24 if I saw a reason I was more than welcome to use this address.
25 And so I did.

1 THE COURT: But this friend of yours, he lives in
2 that house?

3 THE WITNESS: No. He visits it occasionally.

4 THE COURT: He owns the house?

5 THE WITNESS: He also -- he's also Austrian who also
6 lives in London and who occasionally goes to this summer house
7 of his in Malta.

8 THE COURT: Okay. Go ahead. I'm sorry.

9 BY MR. LENDER:

10 Q And you also used that Malta address for cosmetic tax
11 purposes on invoices that you had submitted to LBEL, right?

12 A Yeah. My secretary did that.

13 Q And you also used an address in Mexico for certain
14 invoices that you submitted to Lehman, right?

15 A In Mexico, I rented a house once in Careyes for several
16 weeks which coincided with, you know, I think my first use of
17 that address. And, yes, I used it. Yes.

18 Q You used -- so in addition to Malta, you sometimes used
19 the Mexican address on invoices for tax cosmetic purposes as
20 well?

21 A I -- my secretary did the invoicing. I would assume that
22 she did. Yes.

23 Q And you also used an address in Northern Italy, Casa --

24 A Carpione.

25 Q Yeah. You have a better accent than me. But in San

1 Giacomo, right?

2 A San Giacomo. Yes.

3 Q I was close. Okay. But you -- that's another address
4 that you used on invoices that you submitted to LBEL for
5 cosmetic purposes, right?

6 A Yeah, because I was there very occasionally.

7 Q Okay. And that home in Northern Italy was your father's
8 vacation home?

9 A Correct.

10 Q Which you now own?

11 A No. This is a house with six flats. I need to be very
12 precise here.

13 Q Yeah, please.

14 A This is a house with six flats, two of which my father
15 owned, one of which he gave to my brother and the other one he
16 gave to me.

17 Q So you own some portion of this home now?

18 A I now own one of those flats. That is correct.

19 Q And the Northern Italy address is another address that you
20 put on invoices submitted to Lehman Brothers Europe Limited,
21 right?

22 A Yes.

23 Q And, again, for tax cosmetic purposes?

24 A For purely cosmetic purposes that had nothing to do with
25 changing or trying to change the substance of what was really

1 going on, which is that these were U.K. offshore activities
2 that I, you know, carried out outside the U.K.

3 Q Were you providing any advice to Lehman Brothers Europe
4 Limited from Malta?

5 A Yes. I actually do remember I very specifically on one
6 occasion sent in something to them with a Maltese stamp for --
7 you know, for purposes of making the file confirm with the
8 reality.

9 Q I got you. Thank you.

10 MR. LENDER: No further questions. Thank you, Dr.
11 Marsoner.

12 THE COURT: All right.

13 THE WITNESS: Thank you.

14 THE COURT: Any redirect?

15 MR. VAN TOL: I do, Your Honor. I --

16 THE COURT: All right. I think --

17 MR. VAN TOL: -- can do it before or after --

18 THE COURT: Let's take a brief break. I'm trying to
19 get some more cold air pumped into the room. It's getting a
20 little warm. If any of you is uncomfortable, you're very
21 welcome to take your jackets off. I know no one ever takes me
22 up on that, but I really do mean it. If I get one person to do
23 it, then others will follow. So --

24 MR. VAN TOL: I may start the trend.

25 THE COURT: Excellent. I would be grateful if you

1 did.

2 Let's come back at ten minutes to the hour. All
3 right.

4 MR. VAN TOL: Thank you, Your Honor. And I promise I
5 will.

6 MR. LENDER: Thank you, Your Honor.

7 (Recess from 2:42 p.m. until 2:59 p.m.)

8 MR. VAN TOL: I was showing solidarity. So --

9 THE COURT: Dr. Marsoner, please.

10 THE WITNESS: Thank you very much. I have the
11 privilege of the cold air.

12 THE COURT: You put that on? All right. Then I'll
13 need you to keep your voice up. The only reason to keep that
14 off is because it makes it harder for us all to hear, but I
15 will -- if you raise your voice --

16 THE WITNESS: That's very easy. I just have to take
17 one hearing aid out and I'll be much louder.

18 THE COURT: Very good. All right. Go ahead.

19 MR. VAN TOL: Thank you, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. VAN TOL:

22 Q Dr. Marsoner, I want to go back to the testimony you gave
23 about your claim in the LBI SIPA proceedings. At the time were
24 you related -- were you represented by U.S. counsel?

25 A No. No, I was not.

1 Q And how is it that you knew how to submit a claim in the
2 SIPA proceeding?

3 A I got a letter. I got a letter. I must have been -- I
4 got a letter in London. I must have been on some database. I
5 got a letter in London that informed me that if I had a claim
6 against LBI I should make it. And since I -- yeah, I did not
7 take advice. I just thought the margin amount that I stood to
8 lose I might as well, you know, try always to recover it. And
9 so I filled in this form that happened to have reached me in
10 London incidentally.

11 Q And whom did you get that letter from?

12 A I'm sorry.

13 Q Who did you get the letter from?

14 A I believe the -- I received a whole number of such letters
15 in London and they were all from Epiq Bankruptcy Solutions to
16 the best of my recollection.

17 Q All right. I would like to talk about the BAWAG
18 transaction.

19 A Yeah.

20 Q We've seen that you were paid for that in June of 2007; is
21 that right?

22 A I'm sorry. The BAWAG transaction, when I was paid?

23 Q Yes.

24 A Yes. That was in June of 2007.

25 Q Yeah. That was after the effective date of the 2007

1 consulting agreement, wasn't it?

2 A Yeah. Yeah. I believe so. Yeah. Sure. Yeah.

3 Q Did anyone at Lehman take the position that you should not
4 be paid for the BAWAG transaction because you hadn't released
5 any claims under a prior agreement?

6 A No. Of course not. Nobody in any way doubted that this
7 was money I had earned fairly.

8 Q Even though a new agreement had taken over?

9 A Absolutely.

10 Q All right. Now in your binder could you please turn to
11 Exhibit 51? Exhibit 51 is a series of e-mails and within those
12 I would like you to turn to Marsoner 25 which is an e-mail
13 exchange you were asked about on cross.

14 A Yes. I'm on Marsoner 25.

15 Q And you were asked about the middle e-mail from Mr.
16 Sherratt. I would like to ask you about the top e-mail in
17 which you state in the third paragraph:

18 "Objectively these perceptions are compatible since they
19 occurred subsequently to each other. Christian Meissner
20 certainly agrees that my involvement in F1 predates his egis."

21 What did you mean by that?

22 A That means that until November when I had my exchange with
23 Bernard I had also worked at Pignatti's request for Pignatti,
24 but after -- I forget what it was, but relatively soon after my
25 exchange with Bernard my understanding is that essentially

1 Jeremy Isaacs and Peter Sherratt had taken over from the old
2 team on the justification that CVC was such an important M&A
3 and firm relationship that any negotiation that could
4 potentially become adversarial was better handled by the firm
5 represented by Isaacs and Sherratt, Sherratt rather than the
6 business as represented by Pignatti.

7 So essentially, essentially what I was trying to tell
8 Peter was that his perception that he was the big guy on F1
9 after I had been critical is -- are two compatible perceptions.

10 Q Did Mr. Sherratt play any role in setting your
11 compensation for any of the time that you worked for any Lehman
12 entity?

13 A None whatsoever.

14 Q Last question relates to Mr. Meissner. You asked Mr.
15 Meissner to sign a letter on your behalf; is that correct?

16 A That is correct. Yes.

17 Q And do you know why he did not do so?

18 A Yes. He wrote me an e-mail in German, which is part of
19 the record here, in which he says that I should please
20 understand that although what I am putting forward to him is
21 non-problematic, he would rather not get involved because with
22 his new job at Bank of America, Merrill Lynch, head of global
23 corporate investment banking and all that he was far too busy
24 and the last thing he needed in his career was a reminder of
25 his Lehman past.

1 MR. VAN TOL: Thank you. Nothing further, Your
2 Honor.

3 THE COURT: All right. Thank you. Anything more?

4 MR. LENDER: No, Your Honor. Thank you.

5 THE COURT: All right. Dr. Marsoner, thank you very
6 much. You can step down.

7 (Witness excused)

8 MR. VAN TOL: Your Honor, we have no further
9 witnesses. At --

10 THE COURT: All right.

11 MR. VAN TOL: -- at this time we will rest subject to
12 moving in exhibits which I understand we'll do at the end.

13 THE COURT: Very good. Thank you.

14 MR. VAN TOL: Thank you, Your Honor.

15 MR. LENDER: So, Your Honor, Mr. Horwitz will be
16 calling our first witness.

17 THE COURT: Very good.

18 MR. LENDER: Thank you.

19 MR. HORWITZ: Good afternoon.

20 THE COURT: How are you?

21 MR. HORWITZ: Good.

22 THE COURT: Would you please raise your right hand,
23 sir?

24 (Witness sworn)

25 THE COURT: All right. Please make yourself at home.

1 Let us know if you would like a break at any time.

2 DIRECT EXAMINATION

3 BY MR. HORWITZ:

4 Q Could you please state your name for the record?

5 A Steve Kotarba.

6 Q And where are you currently employed?

7 A Alvarez & Marsal.

8 Q What is your current position at Alvarez & Marsal?

9 A Managing director.

10 Q And how long have you held that position?

11 A Approximately eight years.

12 Q What are your responsibilities as the managing director at
13 Alvarez & Marsal?

14 A Sure. As it relates to this case I'm part of the claims
15 management group. So what we typically do in a Chapter 11 case
16 is we're involved in the early days of identifying creditors
17 that would be put onto the master mailing list. We'll then
18 take that and prepare the statements and schedules. We'll work
19 on matters on the claims reconciliation, preference analysis.
20 Primarily we work on the creditor side of the case.

21 Q When did you start working on the Lehman Brothers' Chapter
22 11 cases?

23 A Almost from the beginning, a day or two after it filed.

24 Q Okay. And who were you engaged by?

25 A Sure. We were engaged by Lehman Brothers Holdings Inc.

1 and then there were certain enumerated debtors in that caption.

2 Q Were you engaged by anyone other than the debtors --

3 A We were not.

4 Q -- in these cases?

5 A We were not.

6 Q Do you still work on Lehman Chapter 11 cases?

7 A I personally do not.

8 Q When did you stop working on those cases?

9 A I would say on or about 2011, 2012.

10 Q What were your responsibilities during your work on the
11 Chapter 11 cases?

12 A Sure. Initially it was to handle the triage of the early
13 days of the case as it -- again, as it relates to these
14 matters. We quickly began preparing what's been referred to as
15 the master mailing list which is a list of -- I wouldn't say a
16 list of creditors, but it's a list of all entities that we want
17 to receive notice of the commencement of the bankruptcy cases.
18 We then moved into preparation of the debtors' statements and
19 schedules, and then started to work on claims reconciliation
20 after the bar date was set and claims began to come in after
21 the filing of those statements and schedules.

22 Q Could you describe generally how you prepared the master
23 mailing list?

24 A Sure. What we would have done there is what we do in
25 every case. So as we come into a case what we'll do is we'll

1 have a predesigned checklist that will say from cases that
2 we've been on previously from previous preparation these are
3 the types of categories that we would expect to see in any
4 case. And we'll have a critical group of individuals that
5 we'll invite to that meeting and we'll expand the individuals
6 out as we have that meeting and subsequent meetings.

7 So, for example, on that list we would have employees and
8 we would have someone there from HR as we would like to get a
9 list of employees. We would have vendors because we would
10 expect to have AP. We would have someone there, a general
11 counsel or someone to speak to litigation because we would
12 expect to have open litigation. We would expect to see
13 contract databases so we would have someone that was familiar
14 with those databases, someone from IT to the extent that we
15 needed to do system pulls.

16 But, again, what we would do is we would start with our
17 checklist. We would be looking for subject matter experts that
18 could help us identify and pull out the information for that
19 checklist and then also help us to identify additional
20 categories that would be case specific that we should add to
21 the checklist and again start that same process, identify a
22 subject matter expert, and work with them to prepare the list
23 of creditors.

24 Q Is this what you did for the Lehman Chapter 11 cases?

25 A It is.

1 Q Now could you describe how your subject matter experts
2 that you referred to would help you prepare your --

3 A Sure. So for example, let's take vendors. If we had
4 vendors we would understand -- we would fully expect that a
5 company would have what's called the vendor master. So in
6 order for someone to -- for a company to receive invoices to
7 make payments what's typical and what we see in almost every
8 case is they'll have a computer system that's set up to take in
9 those vendors, to code those vendors, grab general information
10 pertinent here, mailing address, tax ID, things of that nature.

11 When we have a subject matter expert we would want to
12 understand, you know, are there -- where are your vendors, how
13 do we find your vendors, what systems feed into your vendors,
14 who do we call. And then as we get system files, nothing's
15 perfect and we would take -- and we would work through those
16 files that subject matter expert would help us work through
17 those files, answer questions, and certainly let us know if we
18 were complete.

19 Q Now you mentioned vendor master. Were there other systems
20 that you looked at?

21 A Sure. There -- there's always a number system. So there
22 were one or several derivative systems. There were contract
23 systems. There were systems that we used to pull employee
24 files, just to name a few.

25 Q Now what would you do with the information that you

1 ultimately collected from these systems?

2 A Sure. So what we would do is we would collect that
3 information and for that initial purpose we were trying to do
4 two things, where, one, we're contemplating that we're
5 ultimately going to file the debtors' statements and schedules
6 so we're loading them in for that purpose, to identify if they
7 would later be identified as creditors. But at this point what
8 we're trying to do is really just take a list of potential
9 parties so that we can get them a notice.

10 So what we would do there is we're grabbing names and
11 addresses to compile in a format that would be acceptable and
12 usable by, as it was mentioned earlier, Epiq Bankruptcy
13 Solutions was the court-appointed claims and noticing agent
14 here. So we would be grabbing information that we would
15 provide to them that would be used to be -- to make that
16 mailing of the notice of commencement.

17 Q Why would you look in a vendor master system?

18 A Essentially for that early purpose the reason is because
19 it's a good starting point. We're going to assume that for
20 your vendors, while all of them may not ultimately become
21 creditors, you would fully expect that there's going to be a
22 lot of open payables, and when you're talking about a notice of
23 commencement, where's a likely target, that's a good place to
24 start.

25 Q What did you do with contracts?

1 A Well, in this case what we did is we took system poles.
2 So we identified their contract systems and then received data
3 from those systems that would identify the existence of
4 contracts, contract parties and then ultimately the notice
5 addresses for those parties.

6 Q What did you do with -- now what do you do with contracts
7 with non-debtors?

8 A Well, we wouldn't do anything with contracts or with any
9 party with non-debtors. Again, as I mentioned earlier, we've
10 got to, in effect, sort of put our blinders on, there's
11 probably a better word for it, but we have to -- we're
12 responsible to our client. We're retained by certain entities.
13 So we mentioned here LBHI. When we're collecting information
14 we're collecting information because, again, we're tasked with
15 reporting of the liabilities of a specific entity on a stand-
16 alone legal basis. So we're capturing information of our
17 clients, the debtors.

18 Q So when you say you would pull contract information, you
19 were pulling contract information of the debtors?

20 A From an enumerated list, yeah. That's exactly right.

21 Q Okay. And what did you do with the e-mails that are in
22 the Lehman systems?

23 A We wouldn't do anything per se with the e-mails.

24 Q Why not?

25 A We don't view those as being a reliable business record of

1 the company. If there was some reason why, someone identified
2 an e-mail or something of that nature, we would certainly take
3 a look at it. But we're not canvassing for e-mails. That's
4 not a part of what we would view as a record that we would
5 review to pull information.

6 Q So beyond these company systems what else did you look at
7 in preparing the credit matrix?

8 A Again, we would look at the systems themselves. We would
9 look at information and files that would be provided by
10 individuals and subject matter experts. So, for example, there
11 may or may not be in a given case a litigation database.
12 Someone may have a stand-alone file of litigation and they
13 would provide that. There may be certain parties that aren't
14 captured in one of these systems. So we would -- that's what
15 we would canvas with the subject matter expert to understand
16 and pull that information that wouldn't be captured by the
17 other systems that we pulled.

18 Q How did you make a determination as to whether or not to
19 include an address or a name on the master mailing list?

20 A You know, that's sort of easy for us in that there's no
21 decision at that point. So, for example, if we get two
22 addresses that are conflicting, a conflicting address, we would
23 simply mail it to both addresses again because it's there.
24 It's to cast the net as far and wide as we can to get out
25 notice. There's no reason for us to make a distinction at that

1 point which is why I think we mentioned we served to multiple
2 addresses here which is not atypical.

3 Q Well, how did -- if you had multiple addresses how did you
4 decide which ones to include or not include?

5 A Again, we wouldn't. If we had multiple addresses we would
6 mail multiple times.

7 Q What would you do with invoices that you came across?

8 A Again, that wasn't part of what we were reviewing either
9 for the master mailing list or for purposes of preparing the
10 schedules.

11 Q If you found an invoice that was addressed to a non-debtor
12 would you -- what would you do with that?

13 A Again, I find it highly unlikely at that point that we
14 would have reviewed an invoice to put two and two together to
15 identify that it was addressed to a non-debtor. That's just
16 not -- that wasn't -- one, we weren't reviewing invoices and if
17 we had invoices that's not what we were reviewing them for. We
18 were relying on the company's books and records for them to set
19 them up in vendor master, capture it through their normal
20 processes and pull the address information that way.

21 Q So if you're saying you didn't review invoices what -- is
22 there any way that you would have reviewed the -- any
23 attachments or receipts to those invoices?

24 A Not that I can think of. No.

25 Q How much time did you spend preparing the master mailing

1 list for these cases?

2 A I guess the answer is much, much more than we did in a
3 typical case. And the way that a master mailing list is
4 prepared, it's sort of an organic document. So you start with
5 a list and that grows as the case grows. So here what we were
6 trying to do is get out as much notice as we could as soon as
7 possible, understanding that you would have a master mailing
8 list. You would mail a, what's called a notice of commencement
9 that related to that mailing list. But then right on the heels
10 of that we had statements and schedules that were due so we're
11 trying to pull that information together. Certainly as we
12 filed the statements and schedules all of those parties become
13 part of the master mailing list. Parties can request on their
14 own merit to be added to that list.

15 Again, so that -- I would say, you know, in a nutshell it
16 grew as the case grew, but certainly, you know, for our
17 purposes greater than six months preparing that list.

18 Q In a typical case that you work on how long does it take
19 to prepare the master mailing list?

20 A It's hard to say what a typical case is, but, I mean, I
21 can tell you cases where we've pulled together a master mailing
22 list in a week or two.

23 Q Okay. Why did it take so much longer to prepare this
24 master mailing list?

25 A Well, there was a lot -- I mean, one, obviously people

1 have read all about the complexity of these cases, the time
2 demands on everyone in those early days in the cases. In
3 addition, I think someone mentioned there were upwards of 250
4 billion records in this case. So the sheer magnitude of this
5 case made it different than any other, and I think everyone's
6 read about that.

7 Q Did -- how many addresses ended up going into the master
8 mailing list?

9 A I don't have a final number. I mean, I think it was well
10 over 300,000.

11 Q Okay. So if you had wanted to would it have been feasible
12 to review every e-mail and every contract in these cases?

13 A No.

14 MR. HORWITZ: I don't have anything further.

15 THE COURT: All right. Thank you.

16 Cross-examination.

17 MR. VAN TOL: Your Honor, my colleague, Mr. Johnson,
18 will do the cross-examination.

19 THE COURT: Okay.

20 CROSS-EXAMINATION

21 BY MR. JOHNSON:

22 Q Good afternoon, Mr. Kotarba.

23 A Good afternoon. I guess before you get started if we're
24 going to reference exhibits I don't have a binder. I think
25 I --

1 Q Yeah. We will, but actually it will be easier -- we have
2 a special one for you that's going to be referenced back and
3 forth. It would be easier to use ours.

4 A If that's fine with counsel, that's fine with me.

5 Q Okay. So first I want to start with, isn't it correct
6 that Dr. Marsoner was identified as someone who should receive
7 notice of the claims bar date?

8 A I would disagree with that. No.

9 Q Well, otherwise he wouldn't have been sent notice at any
10 address or attempted to deliver notice to any address, isn't
11 that right?

12 A There's been talk about that. There's various reasons
13 why. Again, entitled to notice versus entitled to a notice of
14 commencement, I think it's -- there's a distinction that is
15 probably important here. So he received mailings by virtue of
16 being on the master mailing list. If what you're getting at is
17 did he receive notice as a known creditor I would disagree with
18 that.

19 Q That's not what I asked. I said isn't it correct that Dr.
20 Marsoner was identified as someone who should receive notice of
21 the claims bar date?

22 A I'm only pausing because I'm trying to think of why he
23 would have been -- again, as I mentioned earlier, we're going
24 to be overbroad and making sure that we get out notice of the
25 claims bar date. I can't think of an instance here where when

1 we talk about would he be entitled to notice. He would be
2 entitled to notice if he was a known creditor. We don't view
3 him to be a known creditor. We certainly did send him a notice
4 of the bar date to various addresses.

5 Q So you're testifying that you would send notice to people
6 who didn't deserve it or were entitled to --

7 A I wouldn't --

8 THE COURT: All right. We're not going to have --

9 THE WITNESS: -- phrase --

10 THE COURT: -- we're not going to have questions that
11 sound like that. Okay. So if you have a actual precise
12 question to ask I'm happy to have you ask it. But we're not
13 going to use words like deserve notice.

14 MR. JOHNSON: Sure. I'll move on.

15 BY MR. JOHNSON:

16 Q Mr. Kotarba, could you please look at Exhibit 12 in your
17 book, please?

18 A Okay.

19 Q This is a declaration of Herb Baer with respect to Dr.
20 Marsoner's motion to deem proofs of claim as timely filed. Do
21 you see that?

22 A I do.

23 Q And do you know who Herb Baer is?

24 A I do.

25 Q Is it correct that he worked at Epiq?

1 A That's correct. Yes.

2 Q And Epiq was the company actually in charge of mailing the
3 notices; is that correct?

4 A That's correct. They were the court-appointed claims and
5 notice agent.

6 Q And Alvarez provided names and addresses for the master
7 mailing list that Epiq used to send bar date notices; is that
8 correct?

9 A We did.

10 Q And Alvarez looked at the debtors' books and records to
11 compile these names and addresses?

12 A We did.

13 Q And wouldn't you agree that the debtors' books and records
14 includes e-mails?

15 A I -- again, it gets to the point we're getting to. I
16 wouldn't. I would say that's debtors' information. And I'm
17 not trying to parse words or get into semantics. But for us
18 when we're talking about books and records it's reliable
19 business records and we wouldn't view a review of the debtors'
20 e-mails as being part of their reliable business records for
21 the purposes that we were using them for.

22 MR. JOHNSON: Your Honor, could I pass up Mr.
23 Kotarba's deposition transcript?

24 THE COURT: Sure.

25 (Pause)

1 THE COURT: Thank you.

2 BY MR. JOHNSON:

3 Q Mr. Kotarba, could you look at page 8 starting at line 11?

4 A Okay. I'm there.

5 Q And this is -- just to be clear this is the -- your
6 deposition of December 22nd, 2015 that I took; is that correct?

7 A That's correct.

8 Q So starting at page 8, line 11, I asked, "With regard
9 those names and addresses Alvarez looked at Lehman Brothers'
10 books and records; is that correct?" You answered, "We looked
11 at among other things we looked at the books and records of the
12 filing debtors." My question, "That included e-mails from
13 Lehman Brothers?" Your answer, "It could have."

14 Is that a correct statement?

15 A It is.

16 Q And the debtors kept records of their e-mails; is that
17 correct?

18 A That's correct. Of course they did. Yeah.

19 Q And I believe you testified a little bit earlier that once
20 someone has been identified as going on the master mailing list
21 Alvarez includes every address it finds for them; is that
22 correct?

23 A I would -- I think that's right. Yes.

24 Q And in compiling the mailing list is it Alvarez's goal to
25 identify someone's last known address; is that right?

1 A It is.

2 Q Could you turn to Exhibit 30? This is an affidavit of
3 service of Herb Baer with respect to the notice of deadlines
4 for filing proofs of claim. Do you see that?

5 A I do.

6 Q If you turn to the, I guess it's the second page do you
7 see that he signed that on July 10th, 2009?

8 A I do.

9 Q If you could turn to the next exhibit, Exhibit 7.

10 A Okay. I'm there.

11 Q It's a corrected affidavit of service by Herb Baer.

12 A I see that.

13 Q Do you see that's signed on June 2nd, 2010 on page 3?

14 A I do.

15 Q Do you know why it took almost a year to correct the
16 original affidavit of service?

17 A I don't.

18 Q Alvarez didn't inform Epiq of the mistakes that had been
19 made?

20 A Not to my knowledge, no.

21 Q So to your knowledge Alvarez wasn't aware that there had
22 been any mistakes?

23 A I'm just not familiar with this document or why it would
24 have been filed a year later.

25 Q Well, if you looked back at Exhibit 12, Herb Baer's

1 declaration, you see paragraph 5, how the original affidavit of
2 service incorrectly listed the address of certain parties that
3 were served. Were you not aware that happened?

4 A I was not. I don't recall having a discussion on that.

5 Q Okay. If we could go back to Exhibit 7. Do you see this
6 corrected affidavit of service lists five total addresses for
7 Dr. Marsoner? On the first page you see there's two Malta
8 addresses, a Mexico address and an Italy address?

9 A I do.

10 Q If you flip the page you see that on the very last entry
11 there's a 1 Broad Gate, 5th Floor, London address for Dr.
12 Marsoner?

13 A I do.

14 Q And isn't it correct those addresses were included because
15 Dr. Marsoner had interactions with the debtors?

16 A With looking at this document I can't tell from what
17 system we pulled or why we included those addresses on this
18 document.

19 Q So you don't know, for example, whether the Malta, Mexico
20 and Italy addresses were from invoices; is that correct?

21 A I would have very strong reason to believe they're not
22 from invoices because, again, it's not our process to review
23 invoices or pull from invoices. So they -- I would -- it would
24 be very hard for me to believe that they are from invoices.

25 Q Okay. But let's take a look at the next exhibit, Number

1 25, please. Do you see this is an invoice from Dr. Thomas
2 Marsoner and it says sort of in the middle, expenses incurred
3 by consultant on behalf of Lehman Brothers Europe Limited?

4 A I see that.

5 Q Do you see the address on the invoice is an address in
6 Malta; is that correct?

7 A I do. I do see a Malta address at the top of the invoice.

8 Q And that Malta address matches an address where Dr.
9 Marsoner was sent notice of the claims bar date; is that
10 correct?

11 A I mean, I can go back to the previous exhibit --

12 Q Sure.

13 A -- and prepare that or compare that. I have no reason to
14 believe it doesn't.

15 (Pause)

16 A Yeah. That appears to match. Yeah.

17 Q So -- but you testified that you don't think Dr.
18 Marsoner's Malta address was included on the mailing list
19 because of an invoice?

20 A That's correct. That wouldn't have been a typical record
21 that we would review to pull addresses for the master mailing
22 list.

23 Q So then do you believe it came from a contract?

24 A I -- again, without looking at the -- this document
25 doesn't tell me where the address information would have come

1 from. Likely it would have come from some Lehman system,
2 whether it was a contract system or some other system. I can't
3 tell you looking at this file.

4 Q You have a -- I believe you described a payable systems
5 records that you used for the mailing list; is that correct?

6 A That would have been one of the records we would use.
7 Yes.

8 Q And were that payable systems, did they pull invoices that
9 were in the debtors' records?

10 A I think that would be someone's interpretation of the
11 information that would be required from an invoice to create
12 payables. So I -- it's hard for me to tell you.

13 Q Well, I'll ask you another way then. Are you aware of any
14 other document in the debtors' possession that includes the
15 Malta address?

16 A I think there was a contract mentioned earlier that had
17 the Malta address.

18 Q A 2004 contract?

19 A I believe that's right.

20 Q That was in the debtors' possession?

21 A Again, I don't know.

22 Q Okay. So your answer to my question is you don't know if
23 there's another document --

24 A Could you restate your question?

25 Q Yes. So I asked are you aware of any other document in

1 the debtors' possession that includes the Malta address?

2 A Yeah. There was the document I mentioned earlier which
3 was the contract that had the Malta address. When we were
4 pulling information we would pull reference to that document
5 from a system. Whether the debtors had that particular -- the
6 physical document in their possession, I don't know the answer
7 to that. But I fully expect that it existed, had that address.
8 It would have been in their computer -- it would have been in
9 their contract system and we would have pulled it that way.

10 Q So your testimony is you believed the Malta address came
11 from the 2004 agreement?

12 A I -- my testimony is I don't know where it came from. It
13 would be likely that it would come from there, but I would be
14 speculating. I don't -- with this document, I don't know where
15 that address came from.

16 Q The only way they could use the address on the 2004
17 agreement is if they had it in their possession; is that
18 correct, the debtors had it in their possession?

19 A Well, that would be true, but I don't know that that's why
20 that address is in this document. But you're correct. The
21 only way they could use an address from a contract is if they
22 had the existence of the contract. I agree with that.

23 Q So just to be clear I'm talking about why the Malta
24 address was in the mailing list.

25 A Okay.

1 Q So I asked do you believe that address on the 2004
2 agreement was on -- was included on the mailing list -- let me
3 rephrase.

4 Do you believe that the Malta address was included on
5 the master mailing list because it was on the 2004 agreement;
6 is that correct?

7 A Yeah. And I said I don't know -- I can't tell you looking
8 at this document why that Malta address appeared on the master
9 mailing list.

10 Q But you believe it's because it was on the 2004 agreement?

11 A Again, I said I don't know. It would be very --

12 Q Okay.

13 A Okay.

14 Q Now would you agree that past payments to someone are an
15 indication that they might be entitled to additional payments
16 in the future?

17 A Not necessarily, no.

18 Q Okay. Now when Alvarez provides the addresses does it
19 check to determine if they are vacation addresses?

20 A We do not.

21 Q Do you check to see if they're working addresses?

22 A There -- from my understanding there's some work that's
23 done at Epiq that they will go through and there's a process.
24 I can't remember the word that they have for it. But they can
25 tell if it's a mailable address. I don't know what you mean by

1 working, but, you know, if there's a right zip and that
2 combination they will do some work to make sure that that
3 occurs.

4 Q That's not something that Alvarez does, though?

5 A That's not.

6 Q Okay. Now with respect to the One Broadgate, 5th Floor,
7 London address that we looked at in Exhibit 7 --

8 A Right.

9 Q -- that was LBEL's former address; is that correct?

10 A I believe that's correct.

11 Q And that was no longer LBEL's address in 2009 when the bar
12 date notice was sent; is that right?

13 A I believe that's also correct.

14 Q Let's just look at Exhibit 32 really quickly. This is a
15 Lehman Brothers Europe Limited progress report. It's dated
16 April 21st, 2009.

17 A I'm there.

18 Q Okay. Could you go to page 5? Do you see the full name
19 of the entity listed as Lehman Brothers Europe Limited?

20 A Yes.

21 Q And it's registered address is 25 Bank Street, London,
22 England?

23 A I see that.

24 Q So Alvarez doesn't do an independent check on an address
25 even if it's LBEL's former address?

1 A I'm not sure I understand the question.

2 Q Well, I think you just testified that, and we just looked
3 at the progress report that LBEL's address in 2009 when the bar
4 date was sent was not at the Broad Gate, One Broadgate address?

5 A Right.

6 Q Is that correct?

7 A That's correct.

8 Q But on Exhibit 7, the corrected affidavit of service it
9 lists the One Broadgate address for Dr. Marsoner; is that
10 correct?

11 A I believe that's correct.

12 Q So my question is Alvarez, that doesn't raise any red
13 flags with Alvarez when they input that address into the master
14 mailing list?

15 A It didn't. That's the address we mailed to.

16 Q I'm sorry.

17 A It didn't. That's the address we mailed it to.

18 Q Okay. Could you take a look at Exhibit 28, for instance?

19 (Pause)

20 A Okay. I am there.

21 Q You're at Exhibit 28?

22 A 28. I'm here. Yeah.

23 Q Okay. So you see this is an e-mail from Aaron Johari
24 dated September 19th, 2008. And do you see that there's an LEH
25 Bates stamp in the bottom right-hand corner?

1 A I do.

2 Q And that's because it came from the debtors' files; is
3 that correct?

4 A I believe so. I wasn't part of the production, but I have
5 no reason to disbelieve that.

6 Q Can you turn to LEH 389?

7 THE COURT: Okay. Are you going to lay any
8 foundation on -- for showing the witness this document?

9 MR. JOHNSON: Your Honor, he's spoken about how
10 Alvarez came up with the master mailing list --

11 THE COURT: Yes.

12 MR. JOHNSON: -- and came up with Dr. Marsoner's
13 addresses.

14 THE COURT: Yes.

15 MR. JOHNSON: So now I would like to ask him why
16 another address in the records wasn't included.

17 THE COURT: Okay. And my question remains, are you
18 going to lay any foundation for using this document to question
19 this witness?

20 MR. VAN TOL: Your Honor, if I may --

21 THE COURT: This is not -- this is not a joint
22 participation.

23 MR. VAN TOL: Well, I was just simply going to remind
24 the Court there's a representation from Weil on behalf of
25 Lehman that they were not objecting to the authenticity of the

1 document --

2 THE COURT: My question isn't --

3 MR. VAN TOL: -- as a business record.

4 THE COURT: I'm not making an authenticity -- I'm not
5 raising an authenticity concern.

6 MR. VAN TOL: I -- that's fine. I was confused.

7 THE COURT: Okay. I have a witness on the witness
8 stand who is giving testimony that there were literally
9 hundreds of millions if not billions of documents. And the
10 witness is being shown a document from a Mr. Johari to a number
11 of other folks dated September 19th, 2008. And I would simply
12 like to know what the foundation is for asking the witness
13 questions about this document. I have no doubt that it came
14 from Lehman's files.

15 MR. JOHNSON: Can I confer for a second, Your Honor?

16 THE COURT: Sure.

17 (Pause)

18 MR. JOHNSON: Can I ask one question of Mr. Kotarba,
19 if he's seen this document before in this -- as part of this
20 proceeding?

21 THE WITNESS: I have not.

22 MR. JOHNSON: Okay.

23 BY MR. JOHNSON:

24 Q You didn't see this document as part of your deposition?

25 A Oh, I thought you meant as part of this matter. I mean, I

1 believe this may be a document you asked about -- asked me
2 about at my deposition.

3 Q What was the last part? I'm sorry.

4 A Did you ask me about this document? I didn't see this
5 document independent of these, you know, this matter.

6 Q Well, that's what I'm asking. Did you see this document
7 as part of this proceeding including at your deposition?

8 A I can't recall whether or not I saw this as part of my
9 deposition. If I did not see it as part of my deposition,
10 then, no.

11 MR. JOHNSON: Can I have a second, Your Honor?

12 THE COURT: Uh-huh.

13 (Pause)

14 THE WITNESS: Yeah. Looking at this, I mean, if you
15 can find it --

16 THE COURT: Hold on. There's no --

17 THE WITNESS: Oh, sure.

18 THE COURT: There's no question pending.

19 THE WITNESS: Okay.

20 (Pause)

21 BY MR. JOHNSON:

22 Q If you look at page 35 of your deposition, line 18, it
23 references an Exhibit 10 Bates stamp LEH384 to 395 and then my
24 question, "Do you see this is an e-mail from Aaron Johari dated
25 September" --

1 A Wait. Where are you again?

2 Q Page 35 --

3 MR. HORWITZ: Your Honor, we -- I would like to
4 object. Showing Mr. Kotarba a document from his deposition
5 does not lay a foundation.

6 THE COURT: Well, are you setting up some impeachment
7 here? I don't really understand what you're doing.

8 MR. JOHNSON: Well, yes, Your Honor. He's -- he just
9 testified he has not seen the document.

10 THE COURT: Well, he testified that he wasn't sure he
11 had seen the document other than in connection with this
12 proceeding and --

13 MR. JOHNSON: Right.

14 THE COURT: -- the context of that answer was that
15 this proceeding meant the proceedings relating to Dr.
16 Marsoner's proof of claim, not the Lehman proceeding globally,
17 right? Did I --

18 THE WITNESS: That's --

19 THE COURT: -- get that?

20 THE WITNESS: No. That's correct.

21 THE COURT: Okay.

22 MR. JOHNSON: Okay. Then that's -- that wasn't my
23 understanding of his answer, but that's okay.

24 THE COURT: I'm sorry.

25 MR. JOHNSON: I think -- that wasn't my understanding

1 of his answer, but -- so that's what I was showing him. But he
2 confirmed it now, so.

3 THE WITNESS: That's confirmed. Yeah.

4 BY MR. JOHNSON:

5 Q So I would like to go back to the same e-mail that we
6 spoke about at your deposition.

7 MR. HORWITZ: Your Honor, objection. There's still
8 no foundation for this e-mail that we're referring to.

9 THE COURT: I'm sorry. What was the question again?

10 MR. JOHNSON: Well, there was -- the only question
11 was that I would like to go back to the e-mail that we had
12 looked at at your deposition.

13 THE COURT: Okay. I'm sorry. I'm lost at this
14 point. So if you want to -- if you could help me catch up to
15 where you are. What are we -- what are you asking about?

16 MR. JOHNSON: I'm asking about the same e-mail, Your
17 Honor, the Exhibit 28.

18 THE COURT: Okay. All right. Go ahead. And what's
19 the question?

20 MR. JOHNSON: Well, there hadn't been a question yet.
21 But my question was going to be to identify the 2007 agreement
22 as being an agreement between Dr. Thomas Marsoner and Lehman
23 Brothers Europe Limited.

24 THE WITNESS: I -- just to be clear, so you're
25 talking about the agreement that's attached starting at Lehman

1 389?

2 MR. JOHNSON: That's correct.

3 THE WITNESS: And what's your question on that?

4 BY MR. JOHNSON:

5 Q Do you see that Dr. Thomas Marsoner's name is at the top?

6 A I do.

7 Q And that this is an agreement between Dr. Thomas Marsoner
8 and Lehman Brothers Europe Limited, if you look at LEH 395?

9 A Yeah. That's what it purports to be. Yeah.

10 Q Okay. And do you see there's -- he lists his Austrian or
11 an Austria address?

12 A I do see that.

13 Q But he was not -- that address was not included on the
14 master mailing list; is that correct?

15 A That's correct and I wouldn't expect it to be based on
16 this. Again, I'm not saying that I saw this, but you're
17 talking about an agreement between Dr. Marsoner and a non-
18 debtor entity.

19 Q I believe you testified earlier that once you identify
20 someone to include in the master mailing list you include every
21 address that you have for them?

22 A That we would have access to and that we would search for.
23 We would not have had access to nor would we have searched the
24 address information for non-debtor entities.

25 Q But you had -- but if it was in the debtors' records you

1 would have access to it, wouldn't you?

2 A Yeah, but it gets into the discussion of what constitutes
3 the debtors' records. I'm not sure I understand your question.

4 Q Well, it was produced by your counsel in this proceeding.
5 Doesn't that mean that you had access to it?

6 MR. HORWITZ: Your Honor, Mr. Kotarba was not
7 involved in this part of the document production or even any
8 part of the document production.

9 THE COURT: Objection sustained.

10 MR. JOHNSON: All right. If I could have one second.

11 (Pause)

12 BY MR. JOHNSON:

13 Q Okay. Can we look at Exhibit 21, please? If you would
14 turn to the proof of claim of Dr. Klaus Kinkel.

15 A I'm there.

16 Q Do you see that he attached to a September 10th, 2001
17 agreement between himself and Lehman Brothers Bank House AG?

18 A I do.

19 Q And do you see the address listed on the agreement? It's
20 Sun and Rain 46 in St. Augustine?

21 A I do.

22 Q Do you see this -- if you flip to Exhibit 24 --

23 A I'm there.

24 Q -- do you see this address was included for Dr. Kinkel
25 in --

1 THE COURT: Okay. Can I just -- I'm -- other than
2 reading from documents in a binder I really don't know what's
3 going on here.

4 MR. JOHNSON: Your Honor, the next question is going
5 to be --

6 THE COURT: You haven't laid any foundation. You
7 haven't asked the witness if he's ever seen these documents.
8 So I think I understand what you're trying to do, but -- you
9 know, and there is no objection. But it's a quarter to four
10 and we really have to meaningfully move this along.

11 So you haven't asked this witness if he has ever seen
12 these documents. So right now all this is is a reading
13 exercise and any question, therefore, that you ask him would be
14 completely hypothetical. If you would like to lay a
15 foundation, I'm happy to listen to it.

16 MR. JOHNSON: Okay, Your Honor. Just if I could have
17 one second to confer.

18 (Pause)

19 BY MR. JOHNSON:

20 Q So Alvarez prepared the master mailing list that Epiq
21 relied on to send out the corrected notice of service?

22 A We prepared information that was given to Epiq that was
23 put into the master mailing list.

24 Q Such as addresses and names?

25 A That's correct.

1 Q So Alvarez would have provided Dr. Kinkel's address and
2 name; is that correct?

3 A Again, I -- looking at this document I don't know how or
4 why he got onto the mailing list.

5 Q Did anyone else provide names and addresses to Epiq
6 besides Alvarez's?

7 A Yes. It could have been addresses that came from the
8 schedules. It could have been addresses that -- people could
9 have been asked independently to be added to the mailing list.
10 There were any number of parties and reasons why people could
11 have been added to the mailing list that would not have been an
12 Alvarez addition.

13 Q So you don't know why that address that we just looked at
14 on the agreement was included on the master mailing list?

15 A Looking at these documents, no.

16 (Pause)

17 MR. JOHNSON: I may be done, Your Honor. Just one
18 second.

19 THE COURT: All right.

20 (Pause)

21 MR. JOHNSON: Your Honor, I have no further questions
22 for Mr. Kotarba.

23 THE COURT: All right. Thank you very much.

24 MR. HORWITZ: Your Honor, I just have one brief
25 question on redirect.

1 THE COURT: Okay.

2 REDIRECT EXAMINATION

3 BY MR. HORWITZ:

4 Q Mr. Kotarba, could I ask you to take a look at your
5 deposition transcript which we read from just a moment ago,
6 page 8 where you were asked the question:

7 "We looked other thing -- among other things you looked at
8 records of the filing debtors. That included e-mails from
9 Lehman Brothers?"

10 "A It could have.

11 "Q -- I'm just going to read on.

12 A Sure.

13 Q Okay.

14 "Q So you checked at least some e-mails?

15 "A I don't recall whether we reviewed e-mails or not.

16 "Q E-mails aren't the Lehman Brothers' records?

17 "A I'm trying to figure out the best way to answer that
18 question. If we were provided e-mails to review, we would have
19 reviewed them. We wouldn't have independently gone into the e-
20 mail records and reviewed those records."

21 Now is that an accurate description of what Alvarez &
22 Marsal did with e-mails?

23 A That is. Yes.

24 MR. HORWITZ: No other questions for this witness.

25 THE COURT: All right. Thank you.

1 Anything further?

2 MR. JOHNSON: No, Your Honor.

3 THE COURT: All right. Thank you. You may step
4 down.

5 THE WITNESS: Thank you, Your Honor.

6 (Witness excused)

7 MR. LENDER: Your Honor, for our next and final
8 witness we call Tom Behnke. Ms. Alvarez will be handling the
9 direct.

10 THE COURT: Okay. Very well.

11 THE COURT: Good afternoon, Mr. Behnke. Would you
12 raise your right hand, please?

13 (Witness sworn)

14 THE COURT: Please have a seat. Make yourself
15 comfortable. Let us know if you need a break at any point.

16 MS. ALVAREZ: Your Honor, if I could just hand this
17 to the witness?

18 THE COURT: A different binder?

19 MS. ALVAREZ: It's a binder that --

20 THE COURT: Okay.

21 (Pause)

22 DIRECT EXAMINATION

23 BY MS. ALVAREZ:

24 Q Good afternoon. Would you please state your name for the
25 record?

1 A Thomas Allen Behnke.

2 Q Where are you currently employed?

3 A Alvarez & Marsal.

4 Q What is your position?

5 A I'm a managing director.

6 Q What other titles do you hold?

7 A I am a certified accountant licensed in the State of
8 Texas.

9 Q How long have you been a managing director at Alvarez &
10 Marsal?

11 A I was promoted in January 2015, for a year and a half.

12 Q What position did you hold before that time?

13 A I was a senior director.

14 Q How long were you senior director?

15 A From the date of my employ in May 2009 until January 2015
16 at my promotion, so five and a half years.

17 Q What are your responsibilities at Alvarez & Marsal?

18 A I work in a special lead group called the claims -- CMF,
19 claim services group and my responsibilities are assisting
20 debtors prepare for bankruptcy. During bankruptcy I assist
21 debtors. I do claims objections. I do claims reporting. I'm
22 responsible for distributions, all kinds of claims analysis.
23 That's really it.

24 Q And when did you start working on the Lehman Brothers'
25 Chapter 11 cases?

1 A I started on the Lehman Brothers case at the end of August
2 2011.

3 Q What has your involvement been with Dr. Marsoner's motion?

4 A In my role at Lehman I do all kinds of things in relation
5 to claims, reporting as I said, distributions, things of that
6 matter. So when Dr. Marsoner filed his motion I read it and I
7 became the point person to understand and analyze where certain
8 data came from, where mailings came from and things of that
9 nature. So I've been in the internal point person working with
10 counsel in-house counsel and outside counsel.

11 Q Okay. And in connection with the motion have you reviewed
12 the corrected affidavit of service of the bar date that was
13 filed by Herb Baer?

14 A Yes, I have.

15 Q If you could just turn to Trial Exhibit 7 in that large
16 binder.

17 A Okay.

18 Q Is this the corrected affidavit of service that you just
19 referred to?

20 A Yes, it is.

21 Q Are you familiar with this document?

22 A Yes, I am.

23 Q Okay. I would like to just represent that what's enclosed
24 here at Tab 7 are actually excerpts of that affidavit. The
25 actual affidavit is almost 6,000 pages when you include all the

1 attachments.

2 Mr. Behnke, if you would just take a look at Exhibit E and
3 F to Trial Exhibit 7.

4 A Yes.

5 Q What do these show you?

6 A On Exhibit E approximately halfway down it shows that Dr.
7 Marsoner was served at three different addresses, one in Malta,
8 one in Mexico and one in Italy, and it's Exhibit E. In Exhibit
9 E he was sent based on the affidavit a personalized notice that
10 would have had his name and address on it.

11 Q Now are all the individuals on these list creditors of the
12 estate?

13 A No, they're not all necessary creditors of the estate.
14 Had they been creditors of the estate they would have been on a
15 different exhibit. They would have been on Exhibit F which
16 would have included a personalized notice which would have
17 included a debtor listed, one of the LBHI debtors in our cases.
18 It would have included an amount, a nature, a classification.
19 I am reading from Mr. Baer's declaration here or his affidavit
20 here.

21 So people on Exhibit E were not necessarily creditors.

22 Q Okay. And look -- looking at Exhibit E, you pointed out
23 it indicates that Marsoner was served with the bar date notice?

24 A That's right.

25 Q You mentioned there was a Malta address, a Mexico address

1 and an Italy address?

2 A That's correct.

3 Q Where did those addresses come from?

4 A So when -- after Dr. Marsoner filed his motion we started
5 doing research to find out where the addresses came from.

6 These three addresses came from the company's people soft
7 vendor system, which is essentially their accounts payable
8 system.

9 Q And what is your basis for this understanding?

10 A My basis is talking to company people who are involved in
11 the accounts payable system and, you know, as part of my role I
12 instructed people to do various searches of the company's,
13 Lehman's, LBHI's books and records to determine, you know,
14 where exactly the addresses came from.

15 Q Okay. If you can just turn to Exhibit 15 in the binder.

16 A Okay.

17 Q Do you recognize this?

18 A Yes, I do.

19 Q What is it?

20 A This is an extract from the people soft vendor system. It
21 looks like an Excel file. It's got different columns and
22 headings. But essentially it's an extract of the people soft
23 system which shows the -- Dr. Marsoner, if you look at Column
24 F, for example, it says name. Dr. Marsoner is in there. As
25 you flip through this document, think of a database as a long

1 document with a bunch of column, you continue to go through
2 this. If you, for example, go to page -- it's marked as LEH
3 926, there's a country. One of the country's ITA, which stands
4 for Italy. One or two of them are MLT which stand for Malta,
5 and one of them is MEX which stands for Mexico. Column BD has
6 various address fields in it, and if you continue to the next
7 page, 927, there are address line 2 additional addresses.
8 Column BH is city. Colum BQ is the postal address.

9 So this was an abstract from the people soft system that I
10 requested from company people who pulled from their records.

11 Q And was this accounts payable system maintained by LBHI in
12 the regular course of business?

13 A Yes. This was a system that was maintained. It was a
14 global system for vendors and LBHI had a copy of this when the
15 bankruptcy occurred. So this was a global system that they had
16 a copy of.

17 Q And did you compare the addresses in this extract to the
18 Marsoner addresses that are identified in Exhibit 7 which was
19 the corrected affidavit of service?

20 A Yes, I did.

21 Q And what did you find?

22 A And they agreed.

23 Q Why -- do you know why these addresses would have been
24 LBHI's account payable system?

25 A Well, LBHI, in their accounts payable system, they would

1 have had various addresses for various people. On a global
2 basis they would have had access to them. These particular
3 ones were based on transactions where Dr. Marsoner submitted
4 invoices for LBEL or LBEL as we've talked about it, and the
5 BLHI UK branch as paymaster, essentially the bank, paid those
6 invoices to Dr. Marsoner either through wire or some form of
7 electronic transfer.

8 Q And after LBHI would have paid those invoices how was that
9 dealt with in Lehman's books and records?

10 A So it would have been recorded as an intercompany
11 transaction. So it would have been presumably an expense. He
12 was providing a service that would have been expensed, and then
13 there would have been an intercompany transaction that would
14 have said LBHI would have had a receivable from LBEL in
15 relation to the expenses that they paid for them.

16 Q So in connection with Marsoner whose debts do you
17 understand LBHI paid?

18 A The research that we did, he would -- they were paying
19 debts of LBEL. The invoices were addressed to LBEL and they
20 were paying debts of LBEL.

21 Q Okay. If we can go back to Exhibit 7, the corrected
22 affidavit of service, if you could take a look at Exhibit F to
23 that affidavit.

24 A Yes.

25 Q You'll see -- I'll point you to the bottom of the page.

1 There's an address there listed for Thomas Marsoner. Do you
2 see that?

3 A Yes, I do.

4 Q Do you know where that address came from?

5 A It came from the company's entity master records, a
6 database that stores derivative contracts, trades, things of
7 that nature.

8 Q And what is the basis for -- of your understanding?

9 A The basis is having people at the company at Lehman at the
10 estate that I work for do research and show me that that's
11 where it came from.

12 Q And why would Mar -- Dr. Marsoner be served at an address
13 associated with the derivatives contract?

14 A So on -- he had a derivatives contract with LBCC that was
15 scheduled on Schedule G of the public schedules that were filed
16 with the Court that Mr. Kotarba helped put together. And he
17 was served there, and so he was on this exhibit because he was
18 sent a customized notice that would have personalized various
19 information regarding his schedules.

20 Q Okay. If you could just flip to Trial Exhibit 62 and take
21 a look at it, please. What is Exhibit 62?

22 A Yes, I'm there.

23 (Pause)

24 Q So what is Exhibit 62?

25 A Yes. So Exhibit 62, I'm sorry, is the schedules of --

1 amended schedules of assets and liabilities filed in relation
2 to Lehman Brothers Commercial Corporation which also includes
3 Schedule G which is a listing of executory contracts and
4 unexpired leases.

5 Q And can you turn to, it's called page LBCC Schedules 47.

6 A Yes.

7 Q Can you just show us where Dr. Marsoner appears on
8 Schedule G?

9 A He is the sixth item from the top, Marsoner, Thomas S.
10 And the address is One Broadgate, 5th Floor.

11 Q Do you know why Dr. Marsoner is included in Schedule G?

12 A Because he had a contract in the company's books and
13 records and entity master that said that he had a contract with
14 LBCC, a derivative trade contract.

15 Q Is that be -- does that mean that he was a creditor of
16 LBCC?

17 A Not necessarily being on the list of executory contracts.
18 He might have been a creditor depending on what happened with
19 the contract. This is really a listing of contracts and that's
20 all it is, unexpired contracts and he was listed as having an
21 LBCC contract.

22 Q Do you know where the information on the Schedule G came
23 from?

24 A It came from entity master, the company's books and
25 records.

1 Q Do you know when Marsoner would have been served the bar
2 date notice on the -- at an address identified on Schedule G?

3 A Why he would have been served?

4 Q Yes.

5 A All parties that are listed either in the mailing matrix
6 or on the schedules of liabilities and executive contracts are
7 provided a bar date notice.

8 Q Now it turned out that this One Broadgate, 5th Floor was a
9 former Lehman address, correct?

10 A That's my understanding.

11 Q Do you know if Dr. Marsoner ever identified another
12 address or requested an address change after Schedule G was
13 filed?

14 A He did not. We could not find, and we searched for any
15 correspondence that he had requested specifically, please
16 change my address to the following.

17 Q Okay. I would like to just briefly change topics now and
18 talk about the employment history of Vittorio Pignatti and
19 Ruggero Magnoni.

20 A Okay.

21 Q Can you please describe for us the research you did into
22 their employment history?

23 A Similar to the other things that I did in relation to this
24 case I worked with people at Lehman, the appropriate people, in
25 this case HR, human resources, and asked them to provide

1 information regarding certain people that we were requested in
2 discovery by opposing counsel to look for, certain names they
3 gave us, about 30 names. And they asked to provide information
4 as to their titles, their positions, their entities that they
5 worked for, things of that nature.

6 Q And did opposing counsel to your knowledge ask that we
7 look into the employment history of Pignatti and Magnoni?

8 A No. I believe that those two they did not for some
9 reason, but we felt that it was relevant and provided them that
10 information in the discovery.

11 Q Okay. If you could just turn to Trial Exhibit 14, please.

12 THE COURT: If I could ask you for -- just trying to
13 manage time, how much more time do you think you have?

14 MS. ALVAREZ: Less than five minutes.

15 THE COURT: Okay. And will there be
16 cross-examination?

17 MR. VAN TOL: About 15 minutes, Your Honor.

18 THE COURT: Okay. Very good.

19 BY MS. ALVAREZ:

20 Q If you can look at Exhibit 15, Mr. Behnke.

21 A Yes.

22 Q I'm sorry, 14.

23 A 14. Yes.

24 Q What is Trial Exhibit 14?

25 A So Trial Exhibit 14 is a letter from Weil Gotshal to

1 opposing counsel on a discovery request, and the one item that
2 is included in here is the response of the job titles and
3 officer positions that Lehman was able to research from their
4 books and records.

5 Q Okay. And where did the information in this document come
6 from?

7 A So Lehman has a system, another system called people soft,
8 but it's the people soft HR system. They refer to it
9 as -- it's human resources. That was a global system that
10 stores a lot of information about former employees, current
11 employees, their addresses, their titles. It has a lot of
12 information in it about -- if somebody was employed in Asia it
13 would include that. It was a global entity system.

14 Q And what is -- what does this document show you with
15 regard to Pignatti and Magnoni?

16 A So on page 4 of 7 here it's marked, I don't see a Lehman
17 number, at the top it's number 30. It's Pignatti. So there's
18 a few things that this had that includes dates, either when the
19 person was hired or 3/21/2001, I think that that was part of
20 the requests. It went to 2001. The various job titles at
21 various times, the officer title and what legal entity Mr.
22 Pignatti worked for.

23 So you could see here, the last column, the department
24 legal entity in the company's books and records indicated that
25 for various years he worked for LB Europe Limited and then at

1 other times he worked for LB Limited.

2 Q And with regard to Mr. Magnoni?

3 A So the item below that Item Number 31, shows at various
4 times he worked for LBI, the Milan branch, and LB Limited.

5 Q And what about later on in the document, if you flip to 7
6 of 7?

7 A So on page 7 of 7, actually 5, 6, and 7 are listing of
8 officer titles and directorships. So on page 7 of 7 it shows
9 that Mr. Pignatti had various officer or directorship titles
10 for various entities including Lehman Brothers Inc., but never
11 one of LBHI or the debtors in our estate. He never had a title
12 in our estate.

13 Q And what about Mr. Magnoni?

14 A The same thing. It shows that he has had various titles
15 including, you know, managing director and vice chairman of
16 Lehman Brothers Inc. It shows LBI here and several others, but
17 none of these entities are estate, the debtors that we work on,
18 LBHI or any of our debtors.

19 Q Mr. Behnke, how do you know these lists are accurate?

20 A They came from the companies' books and records. I
21 believe they're accurate.

22 Q So based on the research you've done did Pignatti and
23 Magnoni ever work for LBHI or LCPI?

24 A They never directly worked for LBHI or LCPI or had titles
25 or directorships at our entities.

1 MS. ALVAREZ: Okay. No further questions.

2 THE COURT: All right. Thank you.

3 All right. We're going to take a seven minute break.

4 We'll come back at 4:15 and finish up. All right.

5 Mr. Behnke, you know the rules. You --

6 THE WITNESS: Yes, I do.

7 THE COURT: -- remain under oath. Please don't
8 discuss your testimony or the case with anyone during the
9 break.

10 (Recess from 4:09 p.m. until 4:22 p.m.)

11 THE COURT: All right. Please have a seat.

12 We're losing the battle of the air. I really
13 apologize. I can only say that it would be worse if the
14 courtroom were full. Trust me, I know. So I'm ready when you
15 are.

16 MR. VAN TOL: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. VAN TOL:

19 Q Mr. Behnke, I would like to pick up with the last thing
20 you testified about, which was the interrogatory responses. I
21 believe that is Exhibit 13 and you should have it in front of
22 you. My apologies. Exhibit 14.

23 A 14, yes.

24 Q And you -- we were on page 7 of this exhibit or of the
25 attachment and you were talking about the titles of Mr.

1 Pignatti and Mr. Magnoni. Do you see there at the top there
2 are also titles listed for Mr. Sherratt?

3 A Yes, I do.

4 Q And why did you provide information about the titles for
5 Mr. Sherratt?

6 A Because opposing counsel, your firm, asked us to provide
7 information on him.

8 Q And there's nothing indicate -- in this, in those titles
9 that indicates that Mr. Sherratt was an officer of LBI,
10 correct?

11 A I do not see listed here that he was -- it goes on to page
12 6 of LBI. No. That's correct.

13 Q Okay. Now I would like you in the trial binder to turn to
14 Exhibit 52, please. And in Exhibit 52 I would like you to turn
15 to the next to the last page which is Marsoner 606.

16 A Yes.

17 Q And do you see Mr. Sherratt is listed in the right-hand
18 column under other officers?

19 A Yes, I do.

20 Q And do you see that he's listed as vice chairman of Lehman
21 Brothers Inc.?

22 A I do see that.

23 Q And this is the annual report for Lehman Brothers,
24 correct?

25 A That's correct.

1 Q And is it fair to assume that the annual report for Lehman
2 Brothers is accurate?

3 A Yes. I presume it is.

4 Q So then at least with respect to Mr. Sherratt we see that
5 the chart appended to the interrogatories on Exhibit 14 is
6 inaccurate, correct?

7 A As it relates to this, yes, I guess.

8 Q All right. You also testified that Mr. Pignatti is not
9 listed as an officer of LBHI on Exhibit 14.

10 THE COURT: Well, can I ask a question? Mr. Behnke,
11 the Trial Exhibit 14, the entry for Mr. Sherratt does not
12 include a listing for him as a officer or director of LBI,
13 correct? Right?

14 THE WITNESS: Yes. That is correct.

15 THE COURT: All right. And then counsel just pointed
16 you to the annual report 2007.

17 THE WITNESS: That's correct.

18 THE COURT: Do you as you sit here know -- they're
19 inconsistent.

20 THE WITNESS: They are.

21 THE COURT: Okay. As you're sitting here today do
22 you know which one is accurate and which one is not accurate if
23 one or both or neither?

24 THE WITNESS: I would not know.

25 THE COURT: Okay. Thank you.

1 BY MR. VAN TOL:

2 Q Now I think you testified earlier that in Exhibit 14 it
3 says that Mr. Pignatti is not an officer of LBHI, correct?

4 A That's correct.

5 Q All right. I would like you to turn to Exhibit 42. It's
6 in the trial exhibits. And in Exhibit 42 I would like you to
7 turn to the second page which is a January 7, 2015 letter from
8 Mr. Pignatti. Do you see that?

9 A Yes, I do.

10 Q And do you see in the first line that he states, "I
11 declare under penalty of perjury under the laws of the United
12 States of America that the foregoing is true and correct." Do
13 you see that?

14 A Yes, I do.

15 Q And if you look in the next paragraph after identifying
16 self Mr. Pignatti says he was a vice chairman of Lehman
17 Brothers Holdings Inc. from 1999 to 2006. Do you see that?

18 A Yes.

19 Q That's LBHI, isn't it?

20 A According to this he's saying that.

21 Q Would you agree with me that Mr. Pignatti has a better
22 understanding of what his title is than you?

23 A Absolutely not. I don't agree with that statement.

24 Q So you think Mr. Pignatti worked for seven years as the
25 vice chairman of Lehman Brothers Holdings Inc. under some sort

1 of misapprehension?

2 A I'm been dealing with the claims process at Lehman since
3 2011 and in my dealings a lot of employees filed claims
4 thinking that they worked for LBHI and they did not and we
5 objected to those claims as no liability and we won those
6 objections. People were confused of where they worked.

7 Q And -- but to be clear the basis of your earlier testimony
8 that Mr. Pignatti did not work at LBHI was the chart that we
9 saw attached to Exhibit 14, correct?

10 A That's correct.

11 Q And we have seen that the chart is either inaccurate or
12 inconsistent, correct?

13 A In that one example you're pointing out an inconsistency.
14 That's correct.

15 Q And you would agree with me that it's possible that it's
16 also incorrect with Mr. Pignatti, right?

17 A It's possible, that question. Yes.

18 Q And you have not ever interviewed Mr. Pignatti to ask him
19 what his titles were, correct?

20 A I have not.

21 Q So any knowledge you have gleaned has been solely from the
22 books and records from Lehman Brothers Holdings Inc.; is that
23 right?

24 THE COURT: Yes.

25 MR. LENDER: Your Honor, normally I wouldn't object,

1 but I find this testimony so problematic that I would like to
2 make an objection for the record.

3 To show this witness this letter that he hasn't seen
4 before, but not to show him what he's -- what Mr. Pignatti said
5 in his deposition which is the opposite of what Mr. Van Tol is
6 now saying I think is really inappropriate because what he said
7 in his sworn testimony at deposition was that he was not an
8 officer of LBHI.

9 So I just think this is --

10 THE COURT: Were you going to get to that?

11 MR. VAN TOL: Your Honor, I -- that's redirect.

12 I'm -- Mr. Pignatti --

13 MR. LENDER: No. I'm sorry. That's misrepresenting
14 to a witness. When you say to a witness, would Mr. Pignatti
15 know better than you when you know the sworn testimony is
16 opposite, that's really inappropriate.

17 THE COURT: I know the -- I know how it works. I
18 know all about the scope of cross and what's appropriate for
19 redirect.

20 MR. LENDER: Sorry, Your Honor.

21 THE COURT: But we have not only that, but we also
22 have an original draft which was apparently the original draft
23 of the letter in which it appears to say that Mr. Pignatti was
24 vice chairman of LBEL. So --

25 MR. VAN TOL: And he changed it, Your Honor, to

1 reflect LBHI.

2 THE COURT: All right. Well --

3 MR. VAN TOL: Mr. Pignatti changed it, I mean.

4 THE COURT: Let me ask this, Mr. Behnke. Do you have
5 any direct knowledge one way or the other of what Mr.
6 Pignatti's titles were --

7 THE WITNESS: I don't.

8 THE COURT: -- responsibilities were?

9 THE WITNESS: I don't.

10 THE COURT: All right. Thank you.

11 MR. VAN TOL: I'm sorry, Your Honor.

12 BY MR. VAN TOL:

13 Q Mr. Behnke, let's please turn to Trial Exhibit 29 which is
14 your declaration.

15 A Okay.

16 Q And first just a preliminary question. I think I
17 understand it, but I want to be sure that I know that you had
18 no participation in the compilation of the master mailing list;
19 is that right?

20 A That's correct. I did not have.

21 Q And everything that you have put into your declaration is
22 based on information that you gleaned after the fact, correct?

23 A That's correct, working with the company people, asking
24 questions, talking to them, doing research. That is correct.

25 Q And would it be fair to say that when you're doing that

1 you're trying to cast your -- a wide net and get as much
2 information as possible?

3 A Sure. That's correct.

4 Q And would you agree with me that that's also good practice
5 when one is originally compiling the master mailing list, to
6 cast a wide net and get as much information as possible?

7 A He has to look in the company's books and records and
8 determine whether or not there's a possibility somebody should
9 be sent notice. Correct.

10 Q And you would agree with me that those books and records
11 that you just talked about include e-mails, isn't that right?

12 A I did not agree that they include e-mails.

13 Q So you distinguished e-mails from the debtors' books and
14 records?

15 A From the definition, yes, of debtors' books and records I
16 would not include e-mails. It was over three billion e-mails
17 that are in the debtors' possession.

18 Q All right. Did Alvarez & Marsal have access to the
19 debtors' e-mails to your knowledge?

20 A At the time of the mailing matrix or now? At what point
21 in time?

22 Q Well, let's start with you weren't around for the mailing
23 matrix list. So let's start with now. Does Alvarez & Marsal
24 now have access to the e-mails at Lehman Brothers Holdings
25 Inc.?

1 A They have access to certain e-mails at Lehman Brothers
2 Inc. --

3 Q And the same is true --

4 A -- Holdings Inc.

5 Q Sorry. I didn't mean to cut you off. The same is true
6 when the mailing notice was prepared, correct?

7 A I believe so. Yes.

8 Q And what's the basis of your belief that e-mails are not
9 part of the books and records of a company?

10 A Well, e-mail is really electronic conversation, in my
11 opinion. A lot of things are said in e-mails that the next e-
12 mail contradicts. That it wouldn't be something that you would
13 necessarily record in your books and records as a liability,
14 chatter amongst people. Accounts book things in their books
15 and records based on certain established information, but they
16 don't review every e-mail that compile, for example, the SCC
17 annual report on their schedules of liabilities or on their
18 balance sheet.

19 Q So to be clear, you wouldn't exclude a document simply
20 because it's in an e-mail, right?

21 A I wouldn't. If it was brought to our attention, if
22 somebody said, look at this, we would look at an e-mail.
23 Correct.

24 Q All right. And if I understand the process in compiling a
25 mailing list you would look at invoices. You would look at

1 contracts. You would interview people. Have I left anything
2 out of the process?

3 A To compile a mailing matrix?

4 Q Yes.

5 A You wouldn't look at invoices to compile a mailing matrix.
6 You would look at invoices to prepare liability schedules,
7 whether they go on Schedule D, E or F of the schedules and
8 liabilities. You would look at invoices to determine whether
9 there was an outstanding liability that would make somebody a
10 creditor --

11 Q Okay.

12 A -- but not on a mailing matrix.

13 Q Understood. Thank you for that.

14 But in doing the mailing list then, if I understand
15 it, you would look for contracts; is that right?

16 A You know, it depends on what part of the process you're
17 in. Collecting contracts takes a long time. I mean, it takes
18 six or seven months on this case to pull them together. So you
19 would eventually get to the point that you would have a
20 complete mailing matrix. It might not be on the first week or
21 the second week or the second month. But eventually your
22 mailing matrix would have a list of contracts that the debtors
23 are a party to that are contracts, not non-debtors.

24 Q Okay. And those contracts would help you identify people
25 to whom notice should be given; is that correct?

1 A That's correct.

2 Q And even if that contract is in an e-mail you would still
3 include that as part of the mailing list, right?

4 A If you had access to a specific e-mail that had a contract
5 in it, I presume you wanted to ignore it.

6 Q Okay. To be clear, Alvarez & Marsal had access to Lehman
7 Brothers e-mails at the time the mailing list was compiled,
8 correct?

9 A Alvarez has access to, my understanding, over three
10 billion e-mails.

11 Q Okay. I'd like you to turn, please, to Exhibit 25 in the
12 binder. So Exhibit 25 is a May 21, 2007 invoice and this is an
13 invoice that relates to consulting Services, right?

14 A That's what it says, yes.

15 Q All right. And is it your testimony that -- strike that.
16 The address on the invoice is a Malta address, correct?

17 A That's what it says.

18 Q And is it your testimony that a document like this, since
19 it's an invoice, is something that would not be considered in
20 compiling the mailing list?

21 A When you're compiling a mailing matrix, you're looking at
22 databases. So Lehman, I don't know how many invoices Lehman
23 has, but this invoice may have been the basis of putting a
24 record into a database, which then would be used to notice
25 somebody of a bankruptcy.

1 Q But you don't know that for sure, do you?

2 A I don't know what for sure?

3 Q You don't know for sure that this invoice was used to put
4 in to a data or an accounts payable system, right?

5 A Not this particular invoice. I don't know. I don't have
6 any knowledge that this one was typed in. But at some point,
7 it got into the accounts payable system through this invoice or
8 some other invoice.

9 Q And it could have gotten in through a contract as well,
10 correct?

11 A Possibly through a contract that would have been with a
12 particular debtor that we represented, yes, that's correct.

13 Q Or it could have been -- it could have gotten into the
14 system through an e-mail that had the contract attached,
15 correct?

16 A Do you want me to speculate?

17 THE COURT: No, I do not want you to speculate.

18 THE WITNESS: I have no knowledge of whether somebody
19 had an e-mail that they would have input into a payable system.
20 I have no knowledge.

21 BY MR. VON TOL:

22 Q You've told me what you consider to be the books and
23 records of the debtors. Do you consider invoices to be the
24 books and records of the debtors?

25 A I think invoices are the basis of certain things in the

1 company's books and records, yes.

2 Q Mr. Behnke, please turn to your declaration and in
3 paragraph 7 -- sorry, declaration is Exhibit 29 --

4 A 29, thank you.

5 Q Are you there?

6 A Yes, I am.

7 Q In paragraph 7, you state, "The Chapter 11 estates do not
8 have access to Marsoner's agreements with LBEL." Do you see
9 that?

10 A That's correct.

11 Q That statement is not right, is it?

12 A Through discovery, we did find a very specific, targeted
13 request when we were asked to look for various people's names
14 and we found an e-mail that had a contract connected to it.

15 Q And that was the 2007 advisory agreement?

16 A Yes, I believe it was a 2007 agreement.

17 Q Okay. Well, let's turn to it then. Could you please turn
18 to Trial Exhibit 28?

19 A 28 is not his agreement.

20 Q I'm sorry. You need the bigger book.

21 A I have a big book. 28 is an e-mail.

22 Q You've got it.

23 A Okay.

24 Q Sorry, sorry.

25 A Sorry.

1 Q Speed things up. This came from the debtor's files, isn't
2 that correct?

3 A Yes, the debtor in discovery did find this when we were
4 asked to look for something very specific names like the Jahar
5 (ph).

6 Q And if you turn to Lehman 389, that's the 2007 advisory
7 agreement with Dr. Marsoner, correct?

8 A That is correct.

9 Q And that lists an address at Austria, right?

10 A That is correct.

11 Q And Mr. -- Dr. Marsoner did not receive notice at that
12 Austrian address, isn't that also right?

13 A He did not.

14 Q And are you aware -- excuse me, let me strike that. You
15 are aware, aren't you, that there were other consulting
16 agreement attached to Exhibit 28 other than Dr. Marsoner?

17 A I've been made aware of that, yes.

18 Q And you're aware that several of those people received
19 notice of the bar date, correct?

20 A I am aware of that, yes.

21 Q And four of those people submitted claims in this
22 proceeding, correct?

23 A I am aware of that.

24 Q And the addresses that they used in those proceedings are
25 the same as their consulting agreements, isn't that also right?

1 A The addresses that they were served were addresses that
2 they had provided us. In two instances, they came from the
3 account. The PeopleSoft accounting system, because they had
4 RSU's or CFA's, and I believe the Court is familiar with RSU's
5 and CFA's. And two of them came from invoices where those
6 consultants had provided proper addresses, not addresses in
7 different countries where they were visiting on vacation. So
8 they gave an address. We sent them a piece of mail at that
9 address. They submitted a claim.

10 Q Now, if a contract is found in the system and it lists an
11 address, I take it you send -- you would send a notice to that
12 address even if it's different for -- from an invoice, right?

13 THE COURT: Your question is very unspecific.

14 MR. VAN TOL: I'm sorry, Your Honor.

15 THE COURT: I don't know what a notice.

16 MR. VAN TOL: I'll withdraw it.

17 THE COURT: Okay, thank you.

18 MR. VAN TOL: It was terrible. I'm tired and I
19 apologize to the Court.

20 BY MR. VAN TOL:

21 Q Let me try again, Mr. Behnke. You talked about invoices
22 submitted by people who got -- who then made claims in the
23 estate. And what I'm trying to find out is when the bar date
24 notice is sent to those people, do -- did you only look at the
25 address on the invoice, or did you look for other addresses for

1 those people?

2 A I think I testified that I was not here when the bar date
3 notices and the mailing matrix was compiled. Would you like me
4 to speculate on --

5 Q No.

6 A -- things that happened?

7 Q Not at all. I'd like to ask you your experience in coming
8 up with mailing lists.

9 A Okay.

10 Q So in your experience in compiling a mailing list, you
11 will look for as many addresses as you can reasonably find,
12 would you agree with that?

13 MS. ALVAREZ: Objection, Your Honor.

14 THE COURT: Yes.

15 MS. ALVAREZ: He's already testified that he was not
16 involved in compiling the mailing list in this matter. I'm not
17 sure of the relevance.

18 MR. VAN TOL: He's testified at length, Your Honor,
19 about how the mailing list was compiled after the fact. His
20 knowledge is after the fact. I'm asking him a similar question
21 after the fact based on his after the fact knowledge. If he
22 doesn't know, he can say so.

23 THE COURT: I'm pretty sure that he's given that
24 testimony in response to your questions. So we are far afield.
25 That doesn't mean we should go farther afield so --

1 MR. VAN TOL: I agree, Your Honor.

2 THE COURT: I really only am interested in actual
3 knowledge, not speculation.

4 MR. VAN TOL: Okay.

5 BY MR. VAN TOL:

6 Q I want to be clear I understand your testimony,
7 Mr. Behnke. The fact that someone has listed an address on an
8 invoice related to a contract, that would not mean that you
9 would ignore the -- a different address on the contract, isn't
10 that correct?

11 A I think you're asking me for a hypothetical here and I
12 could talk hypothetical, but I don't think people ignore
13 addresses when they put mailing matrices together, if that's
14 your question.

15 Q You answered my question. Thank you. Last question. Mr.
16 Behnke, you were talking about in your testimony about the way
17 the payment system worked, that LBHI was the pay master and
18 then there'd be these offsetting entries, accounting entries,
19 correct?

20 A Correct.

21 Q Now, did you undertake to look for yourself to see these
22 offsetting accounting entries, or how did you come to that
23 knowledge?

24 A I did not. I spoke to people at Lehman. I read the
25 declaration of (indiscernible). I spoke to (indiscernible). I

1 spoke to other people at the company on how their intercompany
2 transactions work and I'm familiar, being a CPA, on how the pay
3 masters work at companies and how intercompanies are recorded.

4 Q So if I understand you right, it was a general inquiry.
5 You weren't asking about any specific person, consultant, or
6 transaction, correct?

7 A I did not say was there an intercompany recorded for Dr.
8 Marsoner. I know in general at how they do it. That's
9 correct.

10 MR. VAN TOL: Thank you. I have nothing further.
11 Thank you, Your Honor.

12 THE COURT: All right, thank you.

13 MS. ALVAREZ: Very briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. ALVAREZ:

16 Q Mr. Behnke, you were asked if Mr. Pignatti was an officer
17 of LBHI, correct?

18 A That's correct.

19 MS. ALVAREZ: May I approach, Your Honor? I'd like
20 to show him --

21 THE COURT: Yes.

22 MS. ALVAREZ: -- (indiscernible).

23 THE WITNESS: Okay.

24 BY MS. ALVAREZ:

25 Q If you take a look at the cover, Mr. Pignatti was deposed

1 on November 16th, 2015?

2 A That's correct.

3 Q This is after he submitted the letter to the Court in
4 January of 2015?

5 A Okay.

6 Q All right, if you would turn to page 36 of his transcript,
7 the bottom of 36 to the top of page 37. If you take a look, he
8 was asked whether he was on --

9 MR. VAN TOL: Excuse me. Sorry, Ms. Alvarez.

10 MS. ALVAREZ: Yes.

11 MR. VAN TOL: I apologize, Your Honor, but I have to
12 object. I don't understand what this is. On redirect, is this
13 impeachment of counsel's own witness with someone else's
14 testimony? There's been no -- there's no foundation for this.
15 He doesn't say he doesn't recall.

16 THE COURT: Okay, let's go back. Okay? You showed
17 Mr. Behnke the -- I think it was a PeopleSoft spreadsheet or
18 some spreadsheet that was produced in response to your
19 discovery request. That did not reflect that Mr. Pignatti was
20 an officer of LBI. You then showed the witness the last page
21 of the 2007 annual report in which he's listed as an officer of
22 LBI, right?

23 MR. VAN TOL: That was about Mr. Sherratt, Your
24 Honor, but I see where Your Honor is going, if I may cut to the
25 case. My purpose was impeachment. Mr. Behnke can't testify --

1 or to the extent he's trying to testify about what Mr.
2 Pignatti's title was, I wanted to establish he's using faulty
3 evidence. Now, if opposing counsel would like to say no, let's
4 go with what Mr. Pignatti says, they can do that, but not
5 through this witness. That's improper impeachment.

6 THE COURT: Well, we don't have to do it through this
7 witness because as I understand it, you're going to designate
8 portions of the deposition.

9 MR. VAN TOL: That was my point, Your Honor.
10 Exactly. There's no reason to do this.

11 THE COURT: Well, the reason to do it is because it
12 creates a misimpression on the record. But since it's almost 5
13 o'clock and it's very warm in here, we can move on and we can
14 just take it in the form of deposition designations and
15 counter-designations.

16 MR. VAN TOL: Thank you, Your Honor.

17 MS. ALVAREZ: And that's it. I have nothing further,
18 Your Honor.

19 THE COURT: All right. Thank you. You may step
20 down, Mr. Behnke. All right, it's been a long -- yes.

21 MR. LENDER: The only thing we need to do before we
22 conclude is to -- we submitted the depo excerpts from
23 Mr. Sherratt and Mr. Pignatti. Obviously Mr. Magnoni and
24 Marsoner were here live. So we would move in our deposition
25 designations from Mr. Sherratt and Mr. Pignatti to complete our

1 side of the case.

2 THE COURT: Okay.

3 MR. VAN TOL: To the extent we have objections to
4 those, Your Honor, we waive those and have no objection to
5 their admission.

6 THE COURT: Okay. All right, very well. And then
7 you'll need to come up with a list of the exhibits out of all
8 that were shown the witnesses today, which exhibits you'd like
9 to move into the record. So --

10 MR. LENDER: What I would propose, Your Honor, is we
11 kept a list, I suspect they did to.

12 THE COURT: I hope so.

13 MR. LENDER: We can confer. I assume we'll be able
14 to come up with an agreed lesson and we'll submit that to Your
15 Honor.

16 THE COURT: That would be great.

17 MR. LENDER: Thank you.

18 THE COURT: All right. If the parties are not too
19 tired, I really would like to have an opportunity to speak with
20 you. So if you can join me, we're going to open up the
21 conference room back there. I think it's a little cooler back
22 there. And let's just start with attorneys. And if the
23 principals and clients could remain in the Courtroom or even
24 out in the hallway where it might be cooler, I would be
25 grateful.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. LENDER: Thank you, Your Honor.

(Whereupon, these proceedings were concluded at 4:48 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

T E S T I M O N Y

WITNESS	EXAM BY	PAGE	LINE
Ruggero Magnoni	Mr. Van Tol	6	16
Ruggero Magnoni	Ms. Alvarez	31	11
Thomas Marsoner	Mr. Van Tol	40	14
Thomas Marsoner	Mr. Lender	87	1
Thomas Marsoner	Mr. Van Tol	147	21
Steve Kotarba	Mr. Horwitz	152	3
Steve Kotarba	Mr. Johnson	161	21
Steve Kotarba	Mr. Horwitz	183	3
Allen Behnke	Ms. Alvarez	184	23
Allen Behnke	Mr. Van Tol	197	18
Allen Behnke	Ms. Alvarez	214	15

C E R T I F I C A T I O N

I, Lisa Beck, Sherri Breach and Jami Gallagher certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Beck

Digitally signed by Lisa Beck
DN: cn=Lisa Beck, o=Veritext, ou,
email=digital@veritext.com, c=US
Date: 2016.07.27 10:17:03 -04'00'

Lisa Beck (CET**D 486)

AAERT Certified Electronic Transcriber

Sherri Breach

Digitally signed by Sherri Breach
DN: cn=Sherri Breach, o=Veritext, ou,
email=digital@veritext.com, c=US
Date: 2016.07.27 10:23:14 -04'00'

Sherri Breach (CERT**D 397)

AAERT Certified Electronic Reporter & Transcriber

Jamie Gallagher

Digitally signed by Jamie Gallagher
DN: cn=Jamie Gallagher, o=Veritext,
ou, email=digital@veritext.com, c=US
Date: 2016.07.27 10:23:47 -04'00'

Jamie Gallagher

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: July 27, 2016